(15,925)

Supreme Court of the United States.

October Term, 1895. No. 636.

The Penn Mutual Life Insurance Company *et al.*, [redacted] Appellants

vs.

City of Austin *et al.*, [redacted]

Appeal from [redacted] THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FIFTH CIRCUIT AND WESTERN DISTRICT OF TEXAS, AT AUSTIN.

The Penn Mutual Life Insurance Company et al., *Complainants*,

vs.

The City of Austin, et al., *Respondents*.

In Equity.
No. 207.

IN THE SUPREME COURT OF THE UNITED STATES, AT WASHINGTON, D. C.

The Penn Mutual Life Insurance Company et al., *Appellants*,

vs.

The City of Austin et al., *Appellees*.

Transcript demanded by C. W. Ogden, Solicitor for Appellant, and delivered April 10th, 1895.

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CAPTION.

BE IT REMEMBERED, that there was opened and begun to be holden a regular term of the United States Circuit Court, for Fifth Circuit and Western District of Texas, at the City of Austin in said Circuit and District, on the 4th day of February, A. D. 1895, it being the first Monday in February and

the day fixed by law for commencing a regular term of said Court at said place; and on March 8th, A. D. 1895, the following officers being present:—

Honorable A. P. McCormick, one of the Circuit Judges of the United States for the Fifth Circuit; Honorable Robert U. Culberson, United States District Attorney; Richard C. Ware, United States Marshal, and D. H. Hart, Clerk, the following among other proceedings were had, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AT AUSTIN.

The Penn Mutual Life Insurance Company, Jacob Tome, Robert Goelet and Ogden Goelet, Complainants,	
vs.	
The City of Austin, John McDonald, Mayor of the City of Austin, William C. Walsh, Frank Hamilton, S. K. Morley, A. P. Wooldridge, John W. Maddox, M. A. Taylor and John McDonald, composing the Board of Public Works of the City of Austin; and the Austin Water, Light and Power Company, Defendants.	In Equity. No. 207.

1 COMPLAINANTS ORIGINAL BILL.

Filed January 3rd, 1895.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, FIFTH JUDICIAL CIRCUIT, SITTING IN EQUITY:

The Penn Mutual Life Insurance Company, a corporation organized and existing under the laws of the State of Pennsylvania, and a citizen and resident of the said State of Pennsylvania, Jacob Tome, a citizen and resident of the State of

Maryland, and Robert Goelet and Ogden Goelet, both citizens and residents of the State of New York, present this their bill of complaint for themselves and on behalf of others similarly situated who may desire to come into this suit and pay their proportion of the costs hereof as against the City of Austin, a municipal corporation, incorporated by that name and by virtue of the laws of the State of Texas, the territory whereof is situated in the County of Travis and State of Texas, and against John McDonald, Mayor of said City of Austin, and against Wm. C. Walsh, Frank Hamilton, S. K. Morley, A. P. Wooldridge, John W. Maddox, M. A. Taylor and John McDonald, the said John McDonald and the six other defendants last above named constitute the Board of Public Works of the said City of Austin and are all residents and citizens of the County of Travis and State of Texas; and against the Austin Water, Light & Power Company, a corporation organized and existing under the laws of the State of Texas, and being a resident and citizen of the County of Travis in the State of Texas. And thereupon, humbly complaining, your orators show unto your Honors:

First.—That your orator, the Penn Mutual Life Insurance Company, is a corporation duly organized and existing under the laws of the State of Pennsylvania; that your orator Jacob Tome, is a citizen and resident of the State of Maryland, and that your orators Robert and Ogden Goelet each are citizens and residents of the State of New York. The defendant, the City of Austin is a municipal corporation, organized and existing under the laws of the State of Texas, and John McDonald of the County of Travis and State of Texas, is the Mayor and chief executive officer of the said City of Austin; and the defendant, the Austin Water,
2 Light and Power Company, is a corporation duly organized and existing under the laws of the State of Texas, and Joseph Nalle of the County of Travis and State of Texas, is the President thereof.

Second.—That the defendant herein named, John McDonald, Mayor of the City of Austin, and Wm. C. Walsh, Frank

Hamilton, S. K. Morley, A. P. Wooldridge, John W. Maddox and M. A. Taylor, constitute the Board of Public Works of the City of Austin and were appointed and elected as such by the City Council of the City of Austin, the powers and duties of which said Board of Public Works are defined in an ordinance passed by the City Council of the City of Austin, entitled "An ordinance to amend and to condense into one ordinance an ordinance entitled an ordinance to create a Board of Public Works of the City of Austin, and to prescribe the powers and duties thereof," and amendments thereto passed by the said City Council on October 6th, 1890, and approved October 8th, 1890, by John McDonald, Mayor, a certified copy of which said ordinance is herewith filed, marked "Exhibit A," and prayed to be taken and considered as a part of this bill.

Third.—That by an act duly enacted by the legislature of the State of Texas, entitled "An Act to incorporate the City of Austin," approved April 5th, 1873, (which is contained in the official publication of the laws of Texas, and a duly certified copy of which will be produced, if required, at the hearing of this cause, and which it is prayed will be taken as a part of this bill), it was, among other things provided and enacted by Article 6, Section 7, that the Mayor and City Council of Austin should have power "To construct water works, gas works, within or beyond the city limits, or both; to provide the City with water and gas and to erect hydrants, fire plugs and pumps in the streets; to erect the necessary machinery, lamps, posts, etc., for lighting the city within or beyond the limits of the City for the convenience of the inhabitants of the City and environs," and under section 10 of the said article, "To provide for the lighting of the streets and erecting lamps thereon."

And by section 20 of the same article, "To provide for the prevention and extinguishment of fires and organizing and establishing fire companies."

3 And by Article 7, Section 1, "To make all ordinances which shall be necessary and proper for carrying into effect the powers specified in the preceding section."

Fourth.—That on and prior to the 13th day of April, 1882, the City Water Company, a corporation organized and existing under the laws of the State of Texas, for the purpose of furnishing water to the City of Austin and the inhabitants thereof, owned and operated a water works plant in the City of Austin, and had so owned and operated the same for many years prior to the 13th day of April, 1882.

Fifth.—That on and prior to the 13th day of April, 1882, it was provided by the general laws of the State of Texas, as follows: "The municipal authorities of any city, town or village in which any gas-light or water corporation shall exist, are hereby authorized to contract with any such corporation for the lighting or supplying with water the streets, alleys, lots, squares and public places in any such city, town or village."

Sixth.—That on and prior to the said 13th day of April, 1882, the population of the City of Austin had increased to more than 10,000 people and the then existing facilities for furnishing water to the inhabitants, and the necessary protection from fire, were deemed by the Mayor and City Council of the said City of Austin insufficient to meet the requirements and necessities of the constantly increasing demands of the city and the inhabitants thereof.

Seventh.—That the said Mayor and City Council of the said City of Austin deemed it necessary to provide for a more effective protection of the property of the taxpayers of the City of Austin from fire, and of extending such protection to a larger number of taxpayers and to secure to the inhabitants of the said city a supply of water suitable for domestic purposes.

Eighth.—That for the purpose of supplying the necessities of the City of Austin, as above stated, the investment of a large sum of money was required, at a time when the credit of the city would have rendered it difficult, if not impossible, to have procured the same, and at a time when the making of

a loan sufficiently large for the purposes named, which, if made at all, could only have been made at a very high rate of interest, and would have so nearly exhausted the taxing power of the City, and so heavily burdened the property of the taxpayers of the city that it would have seriously impaired the ability of the city to carry on other needed public works and public improvements.

Ninth.—That on the said 13th day of April, 1882, the best, if not the only means by which the said city of Austin could exercise the power and duty imposed upon it of supplying the said city and the inhabitants thereof with an adequate and wholesome supply of water for domestic purposes, and insuring the property of the taxpayers of the said city adequate fire protection, was by inducing some private individual or corporation to supply the necessary capital for the purpose of constructing the water works then demanded by the necessities of the city.

Tenth.—That no corporation or individual would have been willing to incur the heavy expense and risk involved in the construction of a system of water works, without some assurance that the cost would be repaid, or that, for a reasonable time at least, the investment would yield a certain income.

Eleventh.—That in the exercise of the powers and authority granted to the Mayor and City Council of the said City of Austin by its charter as aforesaid, and for the purpose of supplying the said city as aforesaid and the inhabitants thereof with water, and provide a more effective protection to the property of the tax payers from fire, the said Mayor and City Council of the City of Austin did, by an ordinance passed on the 13th day of April, 1882, authorize and instruct the Mayor of the said City of Austin to contract with the said City Water Company for the construction, for the said City of Austin, a system of water works, adequate to meet the necessities of the said City and the inhabitants thereof, and that the said Mayor of the City of Austin made

and entered into said contract with the said City Water Co., under and by virtue of and in accordance with the said ordinance, a certified copy of which said ordinance and contract, duly executed by the said Mayor and by M. D. Mather, president of the City Water Co., acting on behalf and under the direction and authority of their respective corporations, is herewith filed marked "Exhibit B" and prayed to be taken and considered as a part of this bill.

Twelfth.—That the citizens and tax payers of the said City of Austin, realizing the necessities of the City and the inhabitants thereof and the inability of the City to supply the demands of the inhabitants in that regard, petitioned the City Council of the City of Austin to enter into the said contract with the City Water Co., and that the said petition to that effect was numerously signed by the tax payers and citizens of the said City of Austin, a copy of which said petition is herewith filed, marked "Exhibit C" and prayed to be taken and considered as a part of this bill.

Thirteenth.—That as a preamble to the said ordinance, it was recited by the said Mayor and City Council that the said ordinance was passed and the said ordinance was entered into because "The City Council of the City of Austin deem it necessary to provide for more effective protection of the property of tax payers of the said City from fire, and for the purpose of extending such protection to a large number of tax payers, and also to secure to the citizens of the said City a supply of water suitable for domestic purposes and for the further benefits to the City of Austin hereinafter mentioned, and in accordance with the 7th and 12th sections or paragraphs of article 6, of the charter of the City of Austin, together with the other powers contained in said article 6."

Fourteenth.—That by the terms of said contract between the City of Austin and the City Water Co., there was given and granted to the City Water Company, the right and privilege for a term of twenty years from the date of the execution

of this contract, of supplying the city of Austin and the citizens thereof with water by a system of water works constructed upon the method of supplying a city with water, either for domestic use or for the extinguishment of fire.

"That said Water Co. was further authorized to construct and operate water works in said City; to lay pipes and mains through all the streets, alleys and public grounds; to erect and maintain all engines and machinery necessary for supplying the City with water for domestic, fire, manufacturing and other purposes. In consideration of the privileges granted to said Water Co., it was required to construct works of not less capacity than three millions of gallons in twenty-four hours. The pumps required to be of the kind manufactured by the Holly Co., and of the character described in the ordinance. The company was required by the ordinance to lay many miles of mains and pipes,
6 with hydrants at points to be designated by the City Council, and at all times to maintain a supply of water sufficient for all needs of the city, and especially was it required so to construct its works as to be able to supply from pressure of its own pumps through the mains and pipes, water for the extinguishment of fires, and maintain that pressure as long as should be necessary for the extinguishment.

That the prices to be paid to the Water Co. for supplying water to the city and to its citizens, were set out in said ordinance, the City stipulating that in part consideration for the water so to be furnished, the property of the Water Co. should be exempt from municipal taxation during the running of the contract.

Fifteenth.—That it was further stipulated and agreed under said contract that the City of Austin should have the right to acquire by purchase and become the sole owner of the water works, including all grounds, machinery, mains, pipes, buildings and property at the expiration of ten years, or at any time thereafter, upon giving one year's notice of such intention, upon paying therefor to the owners thereof the value of said property, to be ascertained by appraisal in the manner

provided in said contract. And in case the city should not purchase and become the owner of said works and property at the expiration of twenty years, then all the rights and privileges in this contract granted to said City Water Co. should be extended to said company, its successors and assigns, for a further period of twenty years thereafter, subject to all the duties, liabilities, obligations and penalties therein provided for; provided, that if at the time of such purchase by the City, said works and franchises shall be encumbered by mortgage, the City shall assume and pay such liability as part of the appraised value of said property.

And it is further provided in said contract that so much of the hydrant rental to be paid by the City of Austin under the contract as will fully pay the interest on all outstanding bonds of the City Water Co., and all bonds that may hereafter be issued by it, shall be paid to the holders of such bonds through their trustee, at the times specified for the payment of such hydrant rental to said company, so long and until all such bonds are fully paid and cancelled, and the balance of said rental shall be paid to said company.

7 The City of Austin further stipulated to make all ordinances and appropriations necessary to secure the City Water Co, in the rights and privileges granted in said agreement, as long as the same shall be in force, and that both parties to this contract may be represented by officers, agents, assigns or successors.

Sixteenth.—That the capital of said company was wholly inadequate for the extensive works and improvements that were required by said City for the comfort and protection of its citizens, but it was believed that with the security offered by said contract *to* company would be able to obtain the money required, by the issue of bonds, secured by mortgage upon its property. That this plan of raising the money was well understood and agreed to by the Mayor and City Council of Austin, and in furtherance thereof, it was provided in this contract that the water rental to become due from the City should be paid to the trustee under the mortgage given to

secure such bonds, and that in case of the City's exercising its option to purchase the water works, it should assume the payment of the bonds to be issued by the said Water Co. That inasmuch as by the said contract, the said city bound itself either to buy the said works at not less than their actual value or to grant to said company, its successors and assigns, a renewal for another term of twenty years of all the rights and privileges by said contract granted, which included "The right and privilege of supplying the City of Austin and the citizens thereof with water" at the same rate specified in said contract, it was considered that such bonds would be well secured, and could readily be negotiated.

Seventeenth.—That the Water Co., to secure the money needed for the construction of its works, and in pursuance of the plan contemplated in said contract, did, on the 1st day of July, 1882, issue $250,000.00 of first mortgage 7% gold bonds, and secured the same by a mortgage to the Farmer's Loan & Trust Co. of New York, upon its entire property located in the City of Austin, including its buildings, engines, pumps, mains and pipes, and all its apparatus and machinery connected therewith, and all the property which the said company might thereafter acquire.

That the said mortgage expressly provided that the rentals to become due from the City of Austin, under contract with said company, should be set aside to pay the interest
8 on said bonds as by the terms of the ordinance and contract, the city had agreed might be done.

That the whole issue of said bonds was sold, and the proceeds applied either to the payment for the property already acquired by said Water Company, or to defraying the cost of erecting the engines, buildings, pumps, mains and pipes aforesaid.

And your orator, the Penn Mutual Life Insurance Company, did, in good faith and for a valuable consideration, to wit: the sum of $102,500 in cash, purchase of said mortgage bonds the amount of $100,000 face value; and that your said orator purchased said bonds without any notice whatso-

ever of any alleged invalidity in the contract between the said City of Austin and the said Water Co. and with full faith in the binding obligation of said contract, and in full faith and confidence in fact that said contract between the City of Austin and the Water Company would be faithfully observed and carried out by the said City of Austin.

Eighteenth.—That upon the execution of said contract, the City Water Company at once proceeded to erect a large, expensive apparatus upon the banks of the Colorado river, in the City of Austin, and to operate the same with powerful steam engines of such strength and capacity as were required by the said contract, and were sufficient to force the water throughout the City, and connected therewith many miles of water mains and pipes running through the various streets and alleys of the said city, and supplying water at the points and in the quantities required by the city authorities, and the said works were approved and accepted by the said city by an ordinance passed by the said City Council of the City of Austin on the 5th day of March, 1883, a copy of which said acceptance and approval is herewith filed marked "Exhibit D" and prayed to be taken and considered as a part of this bill.

Nineteenth.—That as the said Water Company was required from time to time to extend and enlarge its works for the comfort and better protection of the said City, it became necessary to raise an additional sum of money, and it thereupon made an additional issue of $100,000.00 of second mortgage to the said Farmers Loan & Trust Company of New York, upon all of its property covered by the first mortgage aforesaid, and the addition thereto, which mortgage was duly executed and recorded in the same manner as the first mortgage, and a copy of the same duly certified will be produced at the hearing of this cause, if required. That all of said bonds were sold and the proceeds applied to the construction and extension of said water works. That your orator, Jacob Tome, did in good faith and for a valuable consideration, to-wit:

the sum of $10,000 in cash, purchase of said mortgage bonds the amount of $10,000 face value; and that your said orator purchased said bonds without any notice whatsoever of any alleged invalidity in the contract, and in full faith and confidence in the fact that said contract between the City of Austin and the Water Company would be faithfully observed and carried out by the said City of Austin.

Twentieth.—That by an ordinance of the Mayor and City Council of Austin, passed January 7th, 1884, M. D. Mather and his associates were granted the right to erect poles in the streets and alleys of the City of Austin, for the purpose of suspending wires and maintaining a system of electric lights.

That said Austin Electric Light Co., for the purpose of erecting the necessary plant and machinery, executed a mortgage to the American Loan & Trust Co. of New York, upon all of its property, to secure an issue of $25,000 6% gold bonds, all of which bonds were sold and the proceeds applied as aforesaid.

Twenty-first.—That on the 28th day of June, 1887, all the rights and interest of the City Water Company of Austin, to the property which it has acquired in said City, including its lands, buildings, engines, pumps, mains, pipes and hydrants, and its rights, franchises and rentals under the contract with the City of Austin above referred to were transferred and assigned to the Austin Water, Light & Power Company, a corporation duly incorporated under the laws of the State of Texas, for the purpose of furnishing water and electric light and power to the City of Austin, and on the 28th day of June, 1887, all the property and franchises of the Austin Electric Light Company were in the same manner conveyed and assigned to the said company, whereby the said Austin Water, Light & Power Co. became seized and possessed of all the property of both the aforesaid companies, subject only to the mortgage debts already secured upon them, and became entitled by the terms thereof to all the rights and privileges of said companies, and especially to the

right to furnish water to the City of Austin and its inhabitants upon the terms set out in the ordinance and contract of 13th of April, 1882, between the City of Austin and the said City Water Co. and its successors and assigns, duly certified copies of all of said deeds as herewith filed and prayed to be taken as part of this bill, marked " Exhibits E & F."

Twenty-second.—That with the growth of the City of Austin it became necessary to make large additions to the machinery and equipment of the said Water Company, and to supply the increased demand for water in the new sections of the city, a large amount of new pipes had to be laid, and to procure the money required for this purpose and to comply with the demands made upon it by the city authorities under the terms and stipulations of the contract aforesaid, the said Austin Water, Light and Power Company executed a consolidated mortgage to the Farmers Loan & Trust Co. of New York, to secure the issue of $750,000 six per cent. gold bonds, upon all real estate, buildings, machinery, engines, reservoirs, pumps, pipes, dynamos, boilers, lamps, wires, poles and property of every kind, and especially did it convey to the trustee for the benefit of those who might become the owners of said bonds, all the rights, powers and privileges and franchises granted and conferred under the ordinances and contracts with the city of Austin, and all the net income, rents, profits and emoluments, and especially that which should become due from the City of Austin.

By the terms of said mortgage $375,000 of the bonds to be issued were reserved and set aside for the redemption or exchange of the previous issues of bonds by the two companies of which said Austin Water, Light and Power Company was the successor and assignee. And the remaining $375,000 of said consolidated bonds were sold or hypothecated to raise the money required for the enlargement and extension of said works.

Your orators, Ogden and Robert Goelet did in good faith and for a valuable consideration, to-wit: the sum of $50,000 in cash, purchase of said consolidated bonds the amount of

$50,000 face value, and your orators purchased said consolidated bonds without any notice whatsoever of any alleged invalidity in the contract between the said City of Austin and the said Water Company, and with full faith in the binding obligation of said contract, and in full faith and confi-
11 dence in the fact that said contract between the said City of Austin and the Water Company would be faithfully observed and carried out by the said City of Austin.

Twenty-third.—That since the 1st day of July, 1887, the said Austin Water, Light and Power Company has carried out in good faith all its contracts and undertakings with the City of Austin and has expended large sums of money in making additions to its works and in laying mains and pipes in those streets required by the citizens or designated by the City Council. That the Mayor and City Council have always recognized it as the successor of the City Water Company, and as such bound to carry out its undertakings, and entitled to its rights and privileges.

That from time to time the said City, under the rights reserved in the said contract, has required the said Austin Water, Light & Power Co. to extend its water mains and pipes (and also its appliances for electric lighting) over and through portions of city where the public necessity or convenience was thought to require, but where the private consumers were so few that the only source of revenue was from the hydrant rentals (and the rates for lights) which the said City had contracted to pay, and the said company has always made such extensions solely for the purpose of complying with its said contract, although believing that eventually these portions of the City would be built up, and that then the value of its plant and the security of its bondholders would in a corresponding measure be increased. That the additions so ordered by the said city and constructed by the said Water Co. have all been accepted and made use of by the said city; and on the thirteenth day of May, 1888, the said city acting under the authority of an ordinance passed on the 20th day of February in the same year, contracted with the said company for the erection and

maintenance for a period of five years, of twenty-five arc lights and one hundred incandescent lights, for which the said city agreed to pay the sum of six thousand, two hundred and fifty dollars ($6250.00) per annum. That all of said lights were erected and have been supplied by the said Co. in the manner and upon the terms set forth in the last mentioned contract, which still remains in full force and effect.

12 *Twenty-fourth.*—That the said system of water works constructed as hereinbefore alleged by the said City Water Co. and the said Austin Water, Light and Power Co. is an efficient and approved system of water works, capable of furnishing the City of Austin and the inhabitants thereof now and for many years to come, all the water required for their utmost needs, and of furnishing sufficient and abundant fire protection to all parts of the City where the said mains have been laid and the fire hydrants erected by the said Water companies under the direction of the said City, and that the said Austin Water, Light and Power Co. is abundantly able, through its said system of water works, to furnish all the water required by the said city, and the inhabitants thereof an efficient and effective protection from fire to all the property on any extension which may be reasonably required by the said City for many years, and that the said system of water works is of the reasonable value of Six Hundred and Fifty Thousand Dollars; there has been expended in the construction and maintenance thereof, a much larger sum, to-wit: about the sum of eleven hundred and fifty thousand dollars, but that a large proportion of the capital so invested in the construction and maintenance of the said system of water works has been lost by reason of the constantly growing necessity of taking up old pipes and mains and laying new ones in stead thereof, in order to comply with the repeated requirements of the said City of Austin, and in order to meet the requirements and demands of the said City and the inhabitants thereof, and to preserve and maintain the said system of water works in such condition as will insure to the said City of Austin and the inhabitants thereof an adequate and sufficient supply of water for all purposes.

Twenty-fifth.—That as inducement for the sale of the mortgage bonds hereinbefore mentioned executed by the said Water Co., the said bonds were offered for sale with a statement of all the facts hereinbefore recited, to-wit: that the said works had been constructed under the aforesaid contract, at the request of and for the benefit of the said City; that the sum so stipulated to be paid by the said city for hydrant rentals then amounted to many thousands of dollars per annum, and that the said City had agreed to pay the said sum to the trustee under the said mortgage, to be applied to the payment of interest on said bonds, and that the proceeds of said bonds were to be applied to the payment of the cost of construction and extension of said works which had been so ordered by the said city, and that under the terms of the said contract the said city would either purchase the said works or continue to pay the hydrant rentals for a period much longer than that provided for the running of said bonds, and in the case of its exercising the right of purchasing the said works under the power reserved in the said contract, it would pay for the same their full value as determined by arbitration, and assume payment of said bonds as part of said appraised value.

Twenty-sixth.—That your orators purchased the bonds owned by them as hereinbefore alleged upon the faith in their behalf in the truth of the statements made as hereinbefore alleged, as inducements for the purchase of said bonds and were so purchased in good faith, believing that the value of said works, taken in connection with the contract aforesaid, was abundant security for the said bonds which the said water company then proposed to issue, and that the said Water Co. was fully performing its part of said contract and that the said service was being accepted by the said city, and the annual payments provided for in said contract were being regularly made by the said city to the said Water Co., and that the said contract had been and was being fully performed in good faith by the said Water Co.

Twenty-seventh.—That all of these representations were made by the said Water Co. with the full knowledge and consent and approval of the said authorities of the City of Austin. And it is well known to the City of Austin and its present officers that the said bonds were purchased on the faith of these representations and that in this way the money was raised to pay for the cost of constructing the said works and extending the same as the said city has, from time to time, required; and that thus, the large sum of money contributed by the said bond holders has all been expended for the benefit of the said City of Austin, and at its request, and is now invested in property in the said City, the value of which depends almost entirely upon the said contract.

Twenty-eighth.—That by means of the said contract the said city has, for many years, enjoyed, at prices fixed by itself, an abundant supply of water for needs of its citizens and
14 an efficient means of protecting the property within the city from fire, and that these benefits and advantages have been furnished by the expenditure of money supplied by the said owners and holders of the said bonds purchased on the faith of the said contract. That any breach, on the part of the city, of its said contract or any violations of the terms thereof, in respect to the payment of water rentals, or of the interest on said bonds, and any interruption on the part of the city, or any interference with the rights of the water company by the said city or any one acting under its authority, whereby the right of supplying water to the city of Austin and the inhabitants thereof should be terminated or interfered with, except in the manner provided in said contract, would be a violation of the solemn obligations of the said contract, and destructive of the rights of the said company and of the holders of the bonds issued thereby.

Twenty-ninth.—Your orators further represent that on the 31st day of March, 1890, the said Council of the City of Austin passed an ordinance entitled "An ordinance ordering an election to obtain the consent of the property tax paying

qualified voters of the City of Austin to an extension by the City Council of the bonded indebtedness of the city of Austin for the purposes of constructing a system of water works and furnishing lights for the City of Austin" by which said ordinance it was provided that an election should be held in the City of Austin on the 5th day of May, 1890, for the purpose of obtaining the consent of two thirds of the qualified voters of the City of Austin who paid taxes on property in the said city to the extension of the bonded debt of the said city, in the sum of one million four hundred thousand dollars beyond the existing debt of $125,000.00, for the purpose of erecting a system of water works and the furnishing lights for the city and the inhabitants thereof, which ordinance was approved by the Mayor of the City of Austin on the 1st day of April, 1890. A copy of said ordinance marked "Exhibit G" is herewith filed and prayed to be taken and considered as a part of this bill. And that thereafter, to-wit: on the 5th day of May, 1890, an election was held as provided in the ordinance referred to, and whereby the tax payers of the said City of Austin gave their consent to the extension of the bonded indebtedness of the said city as in the said ordinance provided, and that thereafter, to-wit: on May 5th, 1890, the said City Council of the said City of Austin, further legislating upon the said subject passed an ordinance whereby the said City Council of the City of Austin declared and ordained that more than two-thirds of the qualified voters of the City of Austin who pay taxes on property and having property in said city, having voted in favor of the extension of the bonded indebtedness of the said city in the sum of $1,400,000.00 for the purpose of constructing a system of water works and to furnish lights to the said city and the citizens thereof, that therefore the power to extend the said bonded indebtedness of the city beyond the sum of $125,000.00 had been duly conferred upon the City Council in the manner provided by law, which said ordinance was approved by the Mayor of said city on the 6th day of May, 1890, a copy of said ordinance is herewith filed and prayed to be taken and considered as a part of this bill, the same

being marked "Exhibit H." That thereafter to-wit: on the 21st day of July, 1890, the City Council of the City of Austin, further legislating upon the said subject, passed and adopted an ordinance entitled "An ordinance to provide for the issuance and sale of bonds of the City of Austin to the amount of $1,400,000.00 for the purpose of erecting a system of water works and furnishing light by and to the city of Austin, and to regulate the disbursement of their proceeds," which said ordinance was fully approved by the Mayor of the City of Austin on the 23rd day of July, 1890, a copy of which ordinance marked Exhibit I is herewith filed and prayed to be taken and considered as a part of this bill. That thereafter, to-wit: on the 6th day of October, 1890, the said City Council of the said City of Austin, further legislating upon his subject, passed and accepted an ordinance entitled "An ordinance to amend and condense into one ordinance an ordinance entitled an ordinance to create a board of public works of the City of Austin, and to prescribe the powers and duties thereof," which said ordinance was duly approved by the Mayor of the City of Austin on October 8th, 1890, whereby the said City Council did by said ordinance provide that the said board of public works as it was then organized, should, subject to the approval of the City Council, continue the construction of a system of water works for the City of Austin and a system of lighting the said city with electricity,
16 by means of a dam across the Colorado river at a point selected by J. P. Frizell, civil engineer, a copy of which said ordinance is herewith filed marked Exhibit J., and prayed to be taken and considered as a part of this bill.

Thirtieth.—That the purpose and intent and effect of the said ordinances passed as alleged in the foregoing article hereof by the said City Council of the City of Austin and approved as aforesaid by the Mayor of the said city, and the purpose and intent and effect of all acts done and performed by the defendants herein, under and by virtue of the said ordinance, was to impair and destroy the binding force and

obligation of the said contracts hereinbefore alleged to have been executed and entered into between the said City of Austin and the said City Water Company and the Austin Water, Light and Power Company, and that the said ordinances were passed and adopted by the said City Council of the said City of Austin and approved by the said Mayor of the City of Austin in violation of the provisions and inhibitions contained in section 10 of Article 1 of the Constitution of the United States.

Thirty-first.—Your orators would further represent that in the unlawful and inequitable manner hereinbefore alleged, the said City of Austin, acting through its said Mayor and City Council and Board of Public Works, proposes, intends and has threatened to construct the said system of water works as hereinbefore alleged, and for the purpose of providing for the interest and sinking fund on the bonds of the said City of Austin, issued for said purpose, the said City of Austin has levied a tax upon all of the property in the said City of Austin, including the property belonging to the said Austin Water, Light and Power Co., and that in the year, 1893, the said City of Austin valued the property of the Austin Water, Light and Power Co. for the purposes of taxes at $258,250.00, and levied a tax thereon of $5,276.80, and for the year 1894 the said City of Austin has valued the property of the Austin Water, Light and Power Co. at the sum of $256,650.00 and will levy a tax thereon of more than $5,000.00, the exact amount of which your orators cannot now state, and that a large proportion of the said tax levied for the said years 1893 and 1894 upon the property of the said Austin Water, Light and Power Co. was for the purpose of paying the interest and sinking fund on said bonds issued by the City of Austin for the unlawful purposes above stated; and that the said City of Austin intends and proposes and threatens to levy upon
17 the property of the said Austin Water, Light and Power Co. a tax for the said purpose, each and every year, and that the said tax which it has threatened to levy for the purposes aforesaid upon the said property of the Austin

Water, Light and Power Co. will largely exceed the sum of $5,000.00. And your orators would further show that your orators are informed and believe, and they allege and charge that the said Austin Water, Light and Power Co. proposes and intends to pay the said tax as above stated, whereby the said City of Austin is, in the manner above stated, levying a tax upon the property which stands as security for the bonds which your orators own, and that the said Austin Water, Light and Power Co. proposes and intends to pay said tax, which said tax is to be expended by the said City of Austin in destroying the value of said property which stands as security for the said bonds, for the proposed construction as hereinbefore alleged, of a rival system of water works.

Thirty-second.—Your orators would further represent, that on or about the 3rd day of April, 1891, the Legislature of the State of Texas passed an act entitled "An Act to incorporate the City of Austin, to grant it a new charter, and to extend its boundaries" and in section 46 of the said act of the Legislature of the State of Texas, the said Legislature of the State of Texas authorized and empowered the said City of Austin to erect, construct, build and operate a water and electric light system to supply the City and its inhabitants with water and electric lights by constructing and maintaining a reservoir of water in and about the channel of the Colorado river within and without the City limits, by erecting a dam across the same where such dam was then being constructed to serve as a reservoir and to furnish power to operate the said electric light and water works system, and to build such other reservoirs as may be necessary at such an elevated point within or without the limits of the city as may be necessary to supply the higher portions of the city with water; a copy of which said act marked Exhibit K is herewith filed, and prayed to be taken and considered as a part hereof.

Thirty-third.—That the purpose, intent and effect of the said act of the legislature of the State of Texas was to impair the

binding force and obligation of the said contracts hereinbefore alleged to have been executed and entered into between
18 the said City of Austin and the said City Water Co. and the said Austin Water, Light and Power Co., and that the said legislation was unlawful and in violation of the provisions and inhibitions contained in section 10 of article 1 of the Constitution of the United States.

Thirty-fourth.—That notwithstanding all the matters and things hereinbefore alleged, the said City of Austin, by and through its Mayor and Council, have proclaimed their purpose of repudiating the contract heretofore made by the said city with the said Water Co., and have undertaken in the unlawful manner hereinbefore alleged to provide for a supply of water for the said city without purchasing the water works of the said company as stipulated in the said contract, or intending to thus depreciate and destroy the value of the property of the said Water Co. in the hope of purchasing the same for a small sum.

Thirty-fifth.—That the water works plant of the said Austin Water, Light and Power Co. is now supplied with the latest and most improved machinery and devices for the purposes of distributing water throughout the city and furnishing abundant and efficient protection from fire, and that the rival system of water works now proposed to be constructed by the City of Austin, is in no particular or respect an improvement upon the said system of water works of the Austin Water, Light and Power Co. and it is not pretended that the same is intended to be constructed for the purpose of securing improved methods or improved machinery or improved devices, and it is contemplated by the said City of Austin to take the water from the Colorado river, the same source from which the said Austin Water, Light and Power Co. take the water distributed by it throughout the city, and it is proposed to prepare and purify the same for use in the same manner that the said water is prepared and purified by the Austin Water, Light and Power Co., viz.: by filtering into chambers prepared for that purpose, and that the said new system of water works so proposed to be constructed by the City of

Austin is not, in any particular or respect, an improvement upon the said system of the Austin Water, Light and Power Co.

Thirty-sixth.—That as soon as the said City of Austin announced its intention of constructing a rival system of water works, and before anything was done in pursuance
19 thereof, the said M. D. Mathers, president of the Austin Water, Light and Power Co., on behalf of the said Water Co. and these bondholders, remonstrated with the said Mayor and City Council and requested them and urged them not to violate the said contract or to take any steps to depreciate the value of the property of the said Water Co., but to exercise the right which the said city has, to purchase the said works at their appraised value ; and the said bond holders have continued, ever since that time, to remonstrate with the said City of Austin and the officers thereof, but that the said city has entirely disregarded the said remonstrances and requests and has openly repudiated all liability under the said contract, and has already expended a large sum of money in the construction of a dam across the Colorado river, and the said Board of Public Works, composed of the said defendants as aforesaid, as such, are now openly declaring their intention to construct a rival system of water works, and to that end are taking contracts with various persons to furnish material for or to perform work upon the construction of the said rival system of water works, and are now actually laying water pipe in and along the streets of the City of Austin ; and it is the declared and avowed intention of the said City to press the construction of said rival system of water works to a speedy completion, and upon the completion of the same, to discontinue the taking of water from the said Water Co. and to refuse to perform any of the obligations resting upon the said city as embraced in the said contract with the said City Water Co.

Thirty-seventh.—That the water pipes and mains of the said Austin Water, Light and Power Co. are now laid on, along and through the principal streets of the City of Austin, and

the said City of Austin and the said Board of Public Works are now threatening to lay the pipes and mains of the said rival system of water works on, along and through the same streets which are now occupied by the pipes and mains of the said Austin Water, Light and Power Company.

Thirty-eighth.—That neither the City of Austin nor the inhabitants thereof have any necessity for two systems of water works and cannot support the same, and that it would be impossible for the said Austin Water, Light and Power Company to supply water to the inhabitants of the said City, if the city repudiates its portion of the said contract, and the value of the entire property of the Austin Water, Light and Power Co. which was so constructed at great expense for the benefit of the said City, and at its request and upon the faith of its obligations will be practically destroyed, and irreparable loss and injury will be inflicted upon the said Austin Water, Light and Power Co. and its bond holders.

That all the revenues received from all sources by the said Water Companies, except that received from the City of Austin as rental from the said hydrants, which had been applied to the payment of interest on the said bonds, and has been expended in the repair, improvement and betterment of the said water works, and for extending the mains and pipes thereof.

Thirty-ninth.—That your orators are informed and therefore charge that the officers of the said City of Austin sometimes pretend, as an excuse for the unlawful acts hereinbefore alleged, that it was beyond the power of its former Mayor and City Council to make the said contract with the City Water Co. to supply the said city with water for a period of twenty years and that the said contract with the City Water Co. was and is *Ultra vires* and therefore void, but your orators are advised that the said city had full power and right to build or buy water works, and the City Council and Mayor thereof were fully authorized to make a contract binding upon the city for either of the purposes of water supply or lighting, and as the contract aforesaid is in the alternative binding the

city to take the water at the rates therein named or to purchase the works at their fair value, and in as much as the said Water Co. has fully complied with and performed all the obligations resting upon it under the said contract, your orators submit that the said city should not be permitted, in equity and good conscience, to deny the authority of the said Mayor and City Council to make the said contract with the said Water Co. until the City of Austin has re-imbursed the Austin Water, Light and Power Company and its bond holders to the extent of the value of the said water works, to be ascertained in the manner provided in the said contract, or in such other manner as may be directed by this Honorable Court for the large sums of money which have been expended by the said City Water Co. and the Austin Water, Light and Power Co. and the bond holders thereof, for the benefit and at
21 the request of the City of Austin and on the faith of the contract hereinbefore set forth.

Fortieth.—That your orators and the other bond holders of the said Water Co. have repeatedly applied to the said Austin Water, Light and Power Co. and its president and Board of Directors, and requested them to institute proceedings to protect the property of the said Water Co. and the rights therein of the said bond holders, but that the said Water Co. has failed to comply with the request of your orators and said bond holders. But the said Austin Water, Light and Power Co. and the officers thereof, by reason of the contract relations existing between the said City of Austin and the said company fear that the consequences of any such litigation instituted by said Water Co. would be exceedingly disastrous, and would precipitate adverse and hostile action by the said City of Austin.

Forty-first.—Your orators further show that this is a cause in equity, of a civil nature, and that the amount in dispute, exclusive of interest and costs, exceeds the sum or value of $5,000.00 and that in this cause there is a controversy between citizens of different states, in which the amount exceeds exclusive of interest and costs, the sum or value aforesaid.

Forty-second.—And now your orators further show unto your Honors, that ever since the making of the said contract between the said city and the said Water Co. and up to the time when, as aforesaid, the said city announced its intention of repudiating the same, the said city has, at frequent intervals, enacted ordinances affirming and declaring the validity of the said contract and the right of the said city to require the said Water Co. and its successors to comply with all the provisions thereof in favor of the said city. That, as hereinbefore stated, the requirements of the said ordinance have been exceedingly burdensome to the said Co., but the said Co. and its successors have always admitted the right of the said city to insist upon the observance of the said contract and have in good faith complied with all its demands and requirements thereunder, and in such compliance, and often without the least prospect of any immediate return to itself, has incurred great expense in enlarging and extending its mains, the means for which were supplied by the bondholders upon the faith of the said contract, and from which the
22 said city did derive and ever since has enjoyed a full benefit and advantage. And yet, notwithstanding all this, the said city is now threatening, as your orators have shown unto your Honors, to build a new system of water works, to destroy the value of the said Water Co.'s property, to repudiate its obligations under the said contract, to confiscate the property of the said Water Co. and in utter disregard of its own duty and of the rights of your orator and other bondholders, to render valueless and destroy their security. All of which acts and doings are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orators.

Forty-third.—And your orators further show that they have frequently and in a friendly manner applied to the said City of Austin and to the Mayor and City Councils thereof, and to the Board of Public Works of said City, and requested them to desist and refrain from all their said proceedings, and your orators well hoped that they would have complied with such reasonable request of your orators, as in equity and good con-

science they ought to have done, but now so it is, may it please your Honors, that the said City of Austin and the said Mayor and City Councils thereof, and the said Board of Public Works, contriving how to injure and aggrieve your orators in the premises, refuse to comply with reasonable request of your orators, in consideration whereof, and for as much as your orators are remediless in the premises by the strict rules of the common law and can have adequate relief only in a Court of equity where matters of this kind are properly cognizable and relievable.

To the end therefore that the said defendants may show, if they can, why your orators herein should not have the relief herein prayed for, and make full, true, direct and perfect answer to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were here again repeated and they were thereunto interrogated, and that your orators may have the decree of your Honorable Court, adjudging and decreeing that the said ordinance and contract, so accepted and acted upon by all the parties, are in full force and effect and that the said contract is a valid and subsisting contract, binding upon the said city as well as upon the said Water Co. and upon the said bond holders, and that the said city must abide by and perform the same, and that until its pur-
23 chase of the said existing Water works, in the manner and upon the terms set forth in the said contract, and that the said City of Austin, its Mayor and City Council and Board of Public Works have no right or power to construct a river water works system to, in any way, interfere with the rights of the said Austin Water, Light and Power Company and that it is unlawful and inequitable for the said City of Austin to levy and collect the tax upon the property of the said Austin Water, Light and Power Co. to be expended in the unlawful and inequitable manner hereinbefore alleged, in the construction of a rival system of water works; and that a writ of injunction may issue out of this Honorable Court restraining the said City of Austin, its Mayor and City Council and Board of Public Works and its other officers, servants, agents and employees from taking a supply of water from

any other source and from proceeding in constructing and maintaining a new and distinct system of water works, and from taking and appropriating to its own use, except in the manner provided in said contract, any portion of the said works, so constructed at its instance and for its benefit with money furnished upon the faith of its obligation by the said Austin Water, Light and Power Co. and the said bond holders, and that your orators may have such other and further relief as the case may, in equity, require and as to this Honorable Court may seem proper.

And may it please your Honors to grant unto your orators a writ or writs of subpœna to be issued out of and under the seal of this Honorable Court, directed to the said defendants, the City of Austin, John McDonald, Mayor of the City of Austin, and John McDonald, Wm. C. Walsh, Frank Hamilton, S. K. Morley, A. P. Woolridge, John W. Maddox and M. A. Taylor, composing the Board of Public Works of the City of Austin, commanding the said defendants and each of them to appear in this Honorable Court at some certain day therein named and to answer the premises but not under oath, answer under oath being expressly waived, and abide by and perform such decree as may be rendered herein.

THE PENN MUTUAL LIFE INS. CO.

EDW'D. M. NEEDLES,
President.

J. TOME,
ROBERT GOELET,
OGDEN GOELET,

By

ROBERT GOELET,
Atty.

SAMUEL B. HUEY,
CHAS. W. OGDEN,
24 PRESTLY K. EWING,
O. T. HOLT,
J. M. MCCORMICK,
WENDEL SPENCE,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
STATE OF PENNSYLVANIA,
COUNTY AND CITY OF PHILADELPHIA, } *ss.*

Edward M. Needles being duly affirmed states that he is the President of the Penn Mutual Life Insurance Company, one of the Complainants in the foregoing bill, and that the facts therein stated are true, in so far as they are stated of his own knowledge, and so far as they are stated on information derived from others he believes them to be true.

EDW'D M. NEEDLES.

Affirmed to and subscribed before me this 18th day of December, A. D. 1894.

CURTIS PARSON,
Notary Public.

[SEAL]
PHILADELPHIA, PA.

UNITED STATES OF AMERICA,
STATE OF MARYLAND,
CITY OF BALTIMORE, } *ss.*

Jacob Tome being duly sworn says that he is one of the Complainants in the foregoing bill, and that the facts therein stated are true, in so far as they are stated of his own knowledge, and so far as they are stated on information derived from others he believes them to be true.

J. TOME.

Sworn to and subscribed before me, this 19th day of December, A. D. 1894.

HENRY R. DULANY,
Notary Public.

[SEAL]

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
COUNTY AND CITY OF NEW YORK, } *ss.*

Robert Goelet being duly sworn says that he is one of the complainants in the foregoing bill, and that the facts therein stated are true, in so far as they are stated of his own knowledge, and so far as they are stated on information derived from others he believes them to be true.

ROBERT GOELET.

Sworn to and subscribed before me, this 21st day of December, A. D. 1894.

T. FRITH, JR.,
Notary Public for Kings Co.

Ctf. filed in N. Y. Co.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.*

Robert Goelet being duly sworn says that he is the attorney in fact for Ogden Goelet who is one of the Complainants in the foregoing bill, and that he executed the same as and for the act and deed of the said Ogden Goelet.

ROBERT GOELET.

Sworn to and subscribed before me this 21st day of Dec'r., A. D. 1894.

T. FRITH, JR.,
Notary Public Kings Co.

[SEAL]
Ctf. filed in N. Y. Co.

(*Endorsement.*) No. 207, Equity. Penn Mutual Life Ins. Co. *et al. vs.* The City of Austin *et al.* Complainants Original Bill. Filed Jan. 3rd, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

On consideration of the foregoing bill and exhibits, and the motion of complainants for a temporary injunction, it is

ordered that the respondents (after ten days notice) show cause before the Circuit Judges or before either of them at the audience room of the U. S. Circuit Court of Appeals, in New Orleans, Louisiana, at 11 A. M. on Thursday, 24 day of January, 1895, or as soon thereafter as counsel can be heard, why the temporary injunction prayed for should not be granted.

This Jany. 7, 1895.

A. P. McCORMICK,
Circuit Judge.

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26 EXHIBITS A AND J TO ORIGINAL BILL.

Filed January 3, 1895.

AN ORDINANCE.

To amend and to condense into one ordinance an ordinance entitled, "An ordinance to create a Board of Public Works of the City of Austin, and to prescribe the powers and duties thereof," and amendments thereto.

SECTION 1. Be it ordained by the City Council of the City of Austin, that a Board of Public Works for the City of Austin be and the same is hereby established, to consist of the Mayor of the City of Austin and the ten persons heretofore elected by the Council as member of the existing Board of Public Works who shall continue in office for the term of four years from the date of their election. In case of the death, resignation or refusal or inability to act of any member of said Board, the Council shall fill the vacancy caused thereby by election by ballot, and the person so elected shall continue in office during the unexpired term he was elected to fill; and the council shall every four years from the date of election of the members of the Board for the regular terms, proceed to elect ten persons, who together with the Mayor for the time being shall constitute the Board of Public Works.

SEC. 2. The said Board as now organized shall, subject to the approval of the City Council, continue the construction of a system of water works for the City of Austin, and a system of lighting the city by electricity, by means of building a dam

across the Colorado river at the point selected by J. P. Frizell, Civil Engineer, and such other reservoirs of water as may be necessary for said purposes, and shall provide for conducting water and electricity to and about the city to supply the city and the inhabitants thereof with said water and light.

SEC. 3. The bonds of the city heretofore by ordinance directed to be issued by the city to raise money to construct a water and light system for the City of Austin, shall be issued, signed and delivered in instalments by the Mayor on requisition by the Board of Public Works and direction of the City Council, as they may be needed from time to time as the work progresses; and said Board shall be the agents
27 of the city to sell said bonds subject to the approval of the City Council, in such quantities and at such times as they may deem best for the City; but no bonds shall be sold for less than par value at the time they may be sold, nor shall said bonds bear a greater rate of interest than five per cent. per annum, and no commission or fees shall be allowed any one for negotiating or selling said bonds.

SEC. 4. The money obtained for said bonds shall be placed in the City Treasury as a special fund and shall only be paid out on appropriations made by the council to pay expenses incurred by the Board of Public Works, authorized by the Council, itemized bills of which shall be approved by the Board of Public Works, and filed in the office of the City Clerk.

SEC. 5. The civil engineer and assistants employed by said Board as heretofore constituted shall continue as the agents and employes of the city until removed by lawful authority, and the contracts made with them by the Board of Public Works for the city are hereby ratified and in all things made the contracts of the city by and through the Board of Public Works, and said engineer, J. P. Frizell, or such other engineer, if any, as shall succeed him, should a vacancy occur in his position, shall be superintendent of said works under the control of said Board, and shall pass on all plans, specifications and bids as to the character of said works to be done and material to be used, and submit his recommendations to

the Board of Public Works, and shall personally attend and superintend said work under the direction and control of said Board who shall report their action to the City Council for its approval; and all contracts made for the construction of said works or any part thereof, shall be made in the name of the city by the Board of Public Works and signed by the Mayor, attested by the City Clerk and sealed with the corporate seal of the City of Austin, when approved by the City Council.

SEC 6. The present Secretary of said Board is hereby recognized as an employe of the City of Austin, to serve as Secretary of said Board on the terms agreed upon between him and said Board, and he shall continue to perform the duties of such position until removed by lawful authority. He shall keep accurate accounts in detail of all the transactions of said Board, to include the names of all persons employed
28 on said works, the amount paid to each one, the material purchased, the place of the purchase, the price paid for the same and the freight and other cost of carriage and hauling, which items shall be reported to the Council from time to time as the work progresses, for their approval, and as appropriations may be required from time to time to pay for the same.

SEC. 7. No class of convict labor shall be employed by said Board, or any contractor or sub-contractor with the city, to work on or about any part of the dam or the water and light system, or to work in quarrying, cutting or otherwise working on or about rock to be used in said work, or in making brick therefor, or in any work of excavating or filling which may be done in the prosecution of this work; and all contracts for any of the afore mentioned work shall contain a stipulation that a violation of the provisions of this section shall render such contract null and void at the instance of the city.

SEC. 8. Said Board shall serve without pay, and no member thereof shall be interested, directly or indirectly, in any contract for material or work to be placed on said dam, or in the profits arising from the same; but may be interested in a bid for the bonds of the city at or above par; but if a member of

the Board shall be interested, directly or indirectly, in a bid for said bonds, he shall make such facts known to the Board, and shall not be present or vote when bids for the bonds are being acted on by the Board.

SEC. 9. That an ordinance entitled "An ordinance to create a Board of Public Works of the City of Austin, and to prescribe the powers and duties thereof," approved April 3, 1890, and all ordinances amending the same, be and the same are hereby repealed, and that this ordinance take effect from and after its passage.

Passed October 6, 1890. Approved October 8, 1890.

JOHN McDONALD,
Mayor.

Attest:
MILTON MORRIS,
City Clerk.

(*Endorsement.*) An Ordinance to amend and to condense into one ordinance an ordinance entitled, "An ordinance to create a Board of Public Works of the City of Austin, and to prescribe the powers and duties thereof," and Amendments thereto. Exhibit A. Exhibit J. No. 207 Eq. Filed Jan. 3, 1895. D. H. Hart, Clerk, By O. H. Millican, Deputy.

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29 EXHIBITS B AND C TO ORIGINAL BILL.

Filed January 3, 1895.

CITY WATER COMPANY CONTRACT WITH THE CITY OF AUSTIN.

AN ORDINANCE.

Contract between the City Water Company and the City of Austin.

This contract made and entered into this thirtieth day of April, A. D. 1882, by and between the *City Water Company*, a corporation of the City of Austin in the County of Travis

and State of Texas, party of the first part, and the *City of Austin*, a body corporate of the County of Travis in the State of Texas, party of the second part, *Witnesseth:*

WHEREAS, the City Council of the City of Austin deem it necessary to provide for a more effective protection of the property of tax payers of the said city from fire; and for the further purposes of extending such protection to a larger number of tax payers, and also to secure to the citizens of the said city a supply of water suitable for domestic purposes, and for the further benefits to the City of Austin, hereinafter mentioned, and, in accordance with the seventh and twentieth sections or paragraphs, of article six (6) of the charter of the City of Austin, together with the other powers contained in said article six (6).

Therefore, Be it ordained by the City Council of the City of Austin:—

SECTION 1. That there is hereby given and granted to the City Water Company the right and privilege for the term of twenty years from the date of the execution of this contract, of supplying the City of Austin and the Citizens thereof with water by a system of water works constructed upon the method of supplying a city with water, either for domestic use or for the extinguishment of fire, that is to say: by pumping the water directly into the mains with contrivances by which the pressure on those mains may be increased or diminished, or preserved uniform.

SEC. 2. The said company is hereby authorized to establish, construct, maintain and operate said work in said City of Austin; to receive, take and store, construct and distribute water through the city; to construct and extend aqueducts, mains and pipes through all the streets, alleys, lanes and public grounds, across any stream or bridges in said City; to erect and maintain all engines, machinery and other appliances necessary for the proper conduction of said works, and for supplying said city and the inhabitants thereof with water for domestic, manufacturing, fire and other purposes.

The said City Water Company shall have the right to take

up all pavements or side-walks on streets, alleys, lanes or public grounds, and make such excavation therein as may be necessary to lay, repair and maintain aqueducts and pipes below the surface of the ground for conveying and distributing said water as aforesaid; *provided*, that said company shall, within a reasonable time, replace and repair all pavements and side-walks and fill all such excavations and restore the streets in as good condition as they were in before.

SECTION 3. The said company shall be liable for all damages occasioned by a failure to guard and protect persons and property from injury by reason of the removal of such pavements and side-walks, or the making of such excavations as aforesaid. The rights and liabilities provided for in this contract shall continue for a period of twenty years, unless sooner extinguished by purchase as hereinafter provided.

SECTION 4. The said water works shall be constructed with pumps of not less capacity than three million gallons in twenty four hours, and also to produce the fire streams hereinafter mentioned, the pumps shall be what is known as the quadruplex compound condensing pumping engines of the Holly Company, and there shall be in addition an auxiliary, or reserve high pressure pump of the same capacity, making an aggregate easy working capacity of five million gallons per day.

SECTION 5. The said City Water Company shall lay six miles of mains and pipes more or less, as shown on the plat which makes a part of this contract, and is marked exhibit "A," for the distribution of water in said city, in addition to the mains and pipes already in use. The mains and pipes used in this extension shall be of proper sizes, and the said City Water Company shall replace such of its mains now in use with such other mains and pipes as to secure, in
31 connection with the extensions herein mentioned, an easy flow of water through the entire system of mains, and to comply with all the conditions of this contract; said mains shall be from four inches to sixteen inches in their inner diameter, and shall be of a standard weight and strength to insure the fire streams hereinafter mentioned.

SECTION 6. The said City of Austin shall, by a vote of the City Council, have the right to take up any of the hydrants on the mains and pipes now in use, and re-locate them upon the extensions designated in section five, and the said City of Austin shall also order twenty five hydrants at the expense of the City Water Company, in addition to the number now in use, to be located upon said extensions, making in all one hundred hydrants upon the entire pipe distribution herein contemplated. The City of Austin hereby agrees to pay said City Water Company an annual rental of one hundred dollars for each of said one hundred hydrants, for the purposes contemplated in this contract, which said rental shall be payable semi-annually on the first of July and January of each year, in a warrant drawn on the City Treasurer, that is to say: at the end of each half year or six months, during the full time specified in this contract, the first payment for each of these hydrants to become due and payable at the end of six months after each of said hydrants is placed in position and ready for use; and, for the purpose of providing for the payment of all hydrant rental becoming due under the provisions of this contract, the City Council shall annually make an appropriation sufficient to pay the same out of the first moneys, not otherwise appropriated, arising from the general revenue of the city.

SECTION 7. For all extensions of mains which the city may hereafter order, in addition to the extension contemplated in this contract, the said company shall erect not less than ten (10) fire hydrants to the mile, for which the city shall pay a rental of fifty dollars a year for each hydrant so ordered and erected, payments to be made as hereinbefore mentioned.

SECTION 8. None of the hydrants from which fire streams are to be taken, as hereinafter provided, shall be located upon pipes or mains of less than four inches in their inner diameter. The said City Water Company shall permit any owner or occupant of any building to erect stand pipes and connect the same with the mains hereby authorized to be laid or any main hereafter laid by order of the council of the said city of Austin, under the provisions of this contract, and they shall have the use of water through such

32

stand pipes and connections for the prevention and extinguishment of fires, free of charge, upon giving the said City Water Company a written agreement that they will not use the water from said pipes and connections for any other purpose whatever.

The said City of Austin shall have the right to erect and connect twenty-five fire hydrants to the mains, at any time, under the provisions of this contract, at the expense of the said Water Company, and use the same for the prevention and extinguishment of fires, free of charge, provided always that the said City of Austin shall first pay a rental on the first one hundred (100) hydrants contemplated in this contract.

The City of Austin shall have the right to connect stand pipes to the mains of all extensions ordered by the city, after first paying a rental for at least ten (10) hydrants for every mile of such extensions. The owner or occupant of any property may also connect stand pipes or hydrants with the mains, upon the city paying the rental hereinbefore mentioned. As soon as the works are completed the said City Water Company shall cause the fire streams hereafter specified to be produced in the presence of the City Council, or such committee as the council may appoint, which test shall take place within five (5) days after the completion of said works. At the first meeting of the council, after the full and faithful performance of the tests hereinafter specified, the City Council shall accept the works and the date of such acceptance shall be the time at which the city shall commence to pay the rental for the hydrants at that time located.

SECTION 9. Said water works when constructed shall have the capacity of discharging six (6) fire streams at the same time, through one (1) inch nozzles, from any six (6) hydrants located upon pipes not less in size than four inches in their inner diameter, through fifty feet of two and one half inch hose, to a height of one hundred (100) feet, or to maintain its equivalent in pressure at the nozzle of said hydrants, so long as it may be necessary for the extinguishment of any fires. There shall be always sufficient pressure for all domestic demands.

33 SECTION 10. The City Water Company furthermore agrees to put new hydrants in the place of old ones so as to make the nozzle connections for hose uniform throughout the whole one hundred and twenty-five hydrants located and to be located on the mains and pipes, as shown on the plat accompanying this proposition.

SECTION 11. The city shall have the right to use the water free of charge from the hydrants for the purpose of flushing gutters and sewers, whenever the council shall deem it necessary for sanitary purposes, upon giving notice to the persons in charge of said water works; the city shall also have water free of charge for the fire department buildings, city hall, and offices occupied for city purposes, for all public schools of the city, for fifteen public watering places, for man and beast, and also for one fountain in each park and public ground, the jets of which shall not exceed in volume one-sixteenth (1-16) of an inch orifice, and not to run to exceed six hours a day for eight months in the year, and shall also have water free of charge for the uses and purposes of the City Cemetery; in consideration for all of which, the property of the City Water Company shall be, and the same is hereby exempted from municipal taxation during the full term for which this contract is executed.

SECTION 12. The water rates to consumers shall not exceed two (2) cents per barrel of forty (40) gallons each.

SECTION 13. The City of Austin shall have the right to acquire by purchase and become the sole owner of said water works, including all grounds, machinery, mains, pipes, buildings and property thereto appertaining, at the expiration of ten (10) years, or at any time thereafter, upon giving one years notice of such intention, upon paying therefor to the owners thereof the value of said property, to be ascertained by appraisal as follows, to-wit: Said city shall select one competent person, and the owners of the water works another, and the two (2) so selected shall select a third, or in case they cannot agree upon such third person, a third person shall be appointed by the Judge of the District Court of Travis County; and the three

men so determined upon shall appraise the value of said property, exclusive of franchise, at its then cash value, which appraisal shall be binding upon both parties as to the value thereof, and said city shall have the right to purchase
34 and become the absolute owner of said works and property at such appraised value, which value shall not be less than the actual value of the works at that time. In case the city does not purchase and become the owner of said works and property, as aforesaid, at the expiration of Twenty (20) years, then all the rights and privileges in this contract granted to said City Water Company shall be extended to said company, its successors and assigns, for a further term of twenty (20) years thereafter, subject to the right of the city to purchase as aforesaid, and subject to all the duties, liabilities, obligations and penalties herein provided for, *provided, however*, that if at the time of such purchase by the city, said works and franchises shall be incumbered by mortgage or otherwise, the said city shall assume and pay such liability as part of the appraised value as aforesaid made and ascertained.

SECTION 14. It is hereby agreed by and between the City Water Company and the City of Austin that so much of the hydrant rental to be paid by the City of Austin under the provisions of this contract, as will fully pay the interest on all outstanding bonds of the City Water Company, and all bonds that may hereafter be issued by the said City Water Company, shall be paid to the holders of such bonds, through their trustee at the time specified in this contract for the payment of such hydrant rental to said company, so long and until all such bonds are fully paid and cancelled, and the balance of the hydrant rental due from the city shall be paid to the said City Water Company. It being understood that the hydrant rental which the City of Austin agrees to pay to the said company for fire protection, or so much of said amount as shall be necessary to pay the interest on such bonds shall be set aside and paid to the trustee of such bonds, and by him used exclusively and only for the payment of interest upon such bonds when and so long as the same shall become due

and payable, but in no event shall the City of Austin pay to said trustee, for such interest, a sum greater than the amount agreed to be paid to the City Water Company.

SECTION 15. That the City of Austin agrees to prevent the use of water from said hydrant, by itself, citizens or corporations, except for the purposes specified in this contract. That the said city shall make all ordinances, appropriations, etc., necessary to secure the City Water Company in the rights and privileges granted in this agreement, so long as the same may be in force. That either or both the parties to this contract may be represented by officers, agents, assigns or successors, who may be legally authorized to act and represent them, severally or jointly, as authorized.

Now therefore, these presents witness, that the said party of the first part, for and in consideration of the rights, privileges and agreements herein specified, hereby covenants and agrees to and with the said party of the second part, by its president M. D. Mather, that it will faithfully keep and abide by the provisions of this contract, and will faithfully and fully discharge, perform, fulfill and carry out all the duties, obligations, powers and all other matters and things by it in said contract provided to be done and performed, and the said party of the second part on its part hereby covenants and agrees to and with the said party of the first part, that it will faithfully keep and abide by the provisions of this contract, and shall and will faithfully and fully discharge and perform, fulfill and carry out the matters and things of every kind whatsoever, by it in said contract provided to be done and performed.

SECTION 16. All previous contracts with the Water Company shall be void after the completion and acceptance of the water works as specified in this contract.

SECTION 17. That the Mayor of the City of Austin be and is hereby authorized and instructed, in behalf of the City of Austin, to sign a certain agreement made and entered into by and between the City Water Company of the City of Austin, through M. D. Mather, President of said City Water Company, and the City of Austin, on this the 13th day of April, A. D.

1882, and the Mayor of said City of Austin is hereby authorized, empowered and directed to carry out and enforce all the provisions contained in said agreement.

SECTION 18. That this ordinance take effect and be in force from and after its passage.

In witness whereof, we, M. D. Mather, President of said City Water Company, and W. A. Saylor, Mayor of the City of Austin, have hereunto signed our names, with official letter affixed, using in one case a scroll for seal, and in the
36 other the official seal of the said City of Austin.

Done at the City of Austin, Texas, on this the thirteenth day of April, A. D. 1882.

Passed April 11th, 1882.

Approved April 13th, 1882.

[SEAL]

W. A. SAYLOR,
Mayor.

M. D. MATHER,
Pres. City Water Company.

Attest:
T. L. PURNELL,
City Clerk.

THE STATE OF TEXAS, }
COUNTY OF TRAVIS. }

Before me, N. S. Walton, Notary Public of Travis County, Texas, on this day personally appeared M. D. Mather, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for all the purposes and considerations therein expressed as President of City Water Company.

Given under my hand and Notarial Seal, at Austin, Texas, this 25th day of April, 1882.

N. S. WALTON,
Notary Public, Travis Co., Texas.

THE STATE OF TEXAS, }
COUNTY OF TRAVIS. }

Before me, N. S. Walton, Notary Public of Travis County, Texas, on this day personally appeared W. A. Saylor, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for all the purposes and considerations therein expressed as Mayor of Austin City.

Given under may hand and Notarial Seal, at Austin, Texas, this 25th day of April, 1882.

N. S. WALTON,
Notary Public, Travis Co., Texas.

THE STATE OF TEXAS, }
COUNTY OF TRAVIS. }

I, Frank Brown, Clerk of the County Court within and for the County and State aforesaid, do hereby certify that
37 the within and foregoing instrument of writing with its certificates of authentication, was filed for registration in my office on the 25th day of April, A. D. 1882, at 3:30 o'clock P. M. and duly recorded the 26th day of April, A. D. 1882, at 10:30 o'clock A. M. in the records of said County, in book 52, pages 278 to 285 inclusive.

Given under my hand and seal of office, this 26th day of April, A. D. 1882.

FRANK BROWN,
Clerk, Co. Court, Travis Co., Texas.

[SEAL]

By
THOS. F. NEILL,
Deputy.

We, the special committee and members of the city council, to whom was referred the ordinance and contract with the City Water Company, hereby certify that we have compared the contract executed in duplicate, with the ordinance and contract as passed by the City Council, April 11, 1882, and approved this 13th day of April, 1882, and find the same correct copies of the ordinance and contract as passed; and that

both copies are in accordance with the meaning and intent of the agreement of the City Water Company.

R. PLATT,
Chairman.
WM. BRUEGGERHOFF,
N. B. METZ,
H. B. KINNEY.

EXHIBIT C.

PETITION.

TO THE HONORABLE CITY COUNCIL OF THE CITY OF AUSTIN, TEXAS:

We, the undersigned residents and tax payers of Austin, respectfully request that you contract with the City Water Company for the construction and adoption of the Holly system, and such extensions as contemplated in the above proposition so as to give the City of Austin a better and more extended fire protection without the aid or assistance of steam fire engines:

Kreisle & Co.	Geo. Levyson & Phillipson,	T. L. Meyer,
38 Walter Tips,	John Bremond,	Alonzo Robinson,
Wayland & Criser,	Wm. Bissell,	John H. Robinson,
D. T. Iglehart,	State National Bank,	A. H. Robinson,
J. M. Keller,	DeLashmutt Bros.,	John Stelfox,
J. W. Graham,	Burke & Johns,	M. Maas,
S. R. Fisher,	W. A. Morris,	C. S. West,
A. P. Wooldridge,	J. W. Driskill,	Bandy & Parker,
R. E. Grant,	W. J. Matthews,	R. H. Smith,
L. E. Edwards,	Smith & Brady,	H. Hirshfeld,
Wm. Steel,	A. Van Patten,	J. W. McLaughlin,
J. W. Lawrence,	John Nagle,	R. M. Swearengen,
E. Krohn estate, per Wm. Brueggerhoff, Trustee,	Thos. Leech, Jr.,	M. Salm,
	DeCordova & Son,	R. B. Underhill,

F. W. James,
C. Myer,
L. W. French,
J. W. Hannig,
R. Bertram,
R. K. Smoot,
R. J. Swancoat,
B. Melasky,
H. C. Williams,
Geo. O. Evans,
J. H. Robinson,
Geo. W. Sampson,
F. Everett,
Paul Pressler,
Herman Schmidt,
Jas. H. Raymond & Co.,
C. F. Bissell,
W. B. Brush,
Newman & Co.,
Lewis Hancock,
Claud D. Johns,
Copes & Bass,
J. H. Bell,
39 Geo. W. Brush,
John Condon,
F. Frischmyer,
F. W. Turner,
Crow, McKean & Co.,
A. K. Hawkes,
E. F. A. Martin,

Chas. Boones,
Oscar Sweat,
A. Bahn,
John C. Lewis,
Elivin Perry,
Jas. A. Nagle,
C. F. Millett,
F. D. Wooten,
J. J. Tobin,
S. Simon,
A. W. Rundell,
A. P. Sprinkle,
R. C. Stewart,
A. Goodman,
John H. Robinson, Jr.,
J. T. Brackenridge,
R. J. Brackenridge,
E. M. Pease,
W. A. Pitts,
John W. Robertson,
E. C. Bartholomew,
T. B. Lee,
Jas. Martin & Son,
Monroe Miller,
G. E. Routh,
Wilson Gregg,
P. W. Jobe,
W. A. Walker,
Joel Pearl,

C. A. Dahlich,
Max Paul,
John Doehler,
Richard W. Bertram,
Joseph Goodman,
S. Loomis,
C. M. Bush,
Clay Jones,
B. C. Wells,
W. C. Wells,
W. J. Burk,
Z. T. Fulmore,
N. G. Shelley,
Frank Brown,
M. Davis,
F. R. Jones,
Padgitt & Warmoth,
W. E. Carpenter,
W. H. Firebaugh,
Andrew Neil,
J. M. Bennett,
F. Gridenweis,
Chas. Hofheintz,
G. Warren,
A. Dohme,
W. Ziller,
C. F. Rumpel,
M. M. Long,
Neil McCashin,
Eugene Bremond.

(*Endorsement.*)—"Exhibits B and C." No. 207 Equity. Filed Jan. 3rd, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBIT "D," TO BILL OF COMPLAINT.

Filed Jan. 3, 1895.

EXHIBIT D.

WHEREAS, on the 13th day of April, 1882, the City of Austin entered into a contract with the City Water Company, in accordance with an ordinance passed April eleventh, 1882, and approved April thirteenth, 1882, providing for a more effective protection of the property of tax payers of the said city from fire, and for other purposes as specified in said contract. And whereas, the City Water Company has constructed a system of water works and now has the same in successful operation, in accordance with the provisions of said contract, and has fulfilled and complied with each and all of the provisions of said contract to the entire satisfaction of the Mayor and the City Council. Now therefore,

Resolved, that said water works be and the same are hereby accepted, and the said contract is hereby declared to be in full force and effect in all its provisions from this date henceforth, and the hydrant rental to be paid by the City of Austin to the City Water Company under the provisions of said contract, shall commence from and after this the six (6) day of March, 1883.

MAYOR'S OFFICE, Austin, Mch. 8th, 1883.

I hereby certify that the above and foregoing resolution was passed by the City Council of the City of Austin on the sixth (6) of March, 1883.

W. A. SAYLOR,
Mayor.

Attest:
T. L. PURNELL,
[SEAL] *City Clerk.*

(*Endorsement.*)—Acceptance of the contract with the City of Austin. March 6th, 1883. Exhibit D. No. 207 Eq. Filed Jan. 3, 1895. D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBIT "E 1" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

THE STATE OF TEXAS, }
COUNTY OF TRAVIS. }

KNOW ALL MEN BY THESE PRESENTS, that the City Water Company of the County of Travis and State of Texas, in consideration of the sum of Two Hundred and Fifty ($250.00) Dollars, cash in hand paid by the Austin Water, Light and Power Company of the County of Travis and State of Texas, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and released, and by these presents do grant, bargain, sell, convey and release unto the said Austin Water, Light and Power Company and their assigns, the following described property, to-wit: Lots Nos. one (1) five (5) six (6) seven (7) and eight (8) in block 186 as the same is designated on the map of the City of Austin, together with all and singular the rights, members, improvements, hereditaments and appurtenances to the same belonging or in any wise incident or appertaining.

To have and to hold all and singular, the premises above mentioned, unto the said Austin Water, Light and Power Company, heirs and assigns forever: and we do hereby bind ourselves, our heirs, executors and administrators to warrant and for ever defend all and singular the said premises unto the said Austin Water, Light and Power Company and their assigns, against every person whomsoever lawfully claim-
41 ing or to claim the same or any part thereof.

Witness our hand at Austin, Texas, this 28th day of June, 1887.

Signed, sealed and delivered in presence of.

THE CITY WATER COMPANY, [SEAL]
M. D. MATHER,
President. [SEAL]

Attest:

D. LACY B. WICKES,
Secretary City Water Company.

(*Endorsement.*) Exhibit E 1.—No. 207. Filed Jan. 3, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBIT "E 2" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

THE STATE OF TEXAS, }
COUNTY OF TRAVIS, }

KNOW ALL MEN BY THESE PRESENTS, that the City Water Company, of the County of Travis and State of Texas, in consideration of the sum of Fifteen Hundred ($1500.00) Dollars cash in hand paid by the Austin Water, Light and Power Company of the County of Travis and State of Texas, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and released, and by these presents do grant, bargain, sell, convey and release unto the said Austin Water, Light and Power Company, its successors and assigns, the following described property, to-wit:

Lots No. one (1) two (2) three (3) and four (4) in block No. one hundred and eighty seven (187) in the City of Austin, County of Travis and State of Texas, fronting each sixty nine feet on Live Oak Street and running back same width one hundred and twenty-eight (128) feet to an alley and comprising the S. ½ of said block No. one hundred and eighty seven; subject to all rights, conditions and reserves mentioned in the deed made to the granter herein by N. G. Shelley and Geo. B. Zimpleman, dated August 28th, 1882, and recorded in the records of the County Clerk of said County and State in Volume 53 on pages Nos. 186, 187, 188, to which reference is made for the details. Together with all and
42 singular the rights, members, improvements, hereditaments and appurtenances to the same belonging or in any wise incident or appertaining.

To have and to hold, all and singular the premises above mentioned, unto the said Austin Water, Light and Power Company, its successors and assigns forever; and we do hereby bind ourselves, heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Austin Water, Light and Power Company, its

successors and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof.

Witness our hand at Austin, Texas, this 28th day of June, 1887.

Signed, sealed and delivered in the presence of:

THE CITY WATER COMPANY, [SEAL]
M. D. MATHER,
President. [SEAL]

Attest:
D. LACY B. WICKES,
Sec'y City Water Company.

I, D. Lacy B. Wickes, Secretary and Treasurer of Austin Water, Light and Power Company hereby certify that the above and foregoing instrument is a true and correct copy of the original now in my possession.

D. LACY B. WICKES,
Secretary & Treasurer.

(*Endorsement.*) Exhibit E 2.—No. 207 Eq.—Filed Jan. 3, 1895. D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBIT "E 3" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

THE STATE OF TEXAS,
COUNTY OF TRAVIS,

KNOW ALL MEN BY THESE PRESENTS, that the City Water Company of the County of Travis and State of Texas, in consideration of the sum of One Thousand ($1,000) Dollars cash in hand paid by the Austin Water, Light and Power Company, of the County of Travis and State of Texas, the receipt of which is hereby acknowledged, have granted, bar-
43 gained, sold, conveyed and released, and by these presents do grant, bargain, sell, convey and release

unto the said Austin Water, Light and Power Company and their assigns, the following described property, to-wit:

Lot No. five (5) in "Alm Hill," a sub-division of out lot No. 44 in division "B" of out lots adjoining the City of Austin, Travis County, Texas, containing one acre of land as shown by the plat of said sub-division recorded in book "Z" on page of the deed records of Travis County, Texas, together with all and singular the rights, members, improvements, hereditaments and appurtenances to the same belonging or in any wise incident or appertaining.

To have and to hold all and singular the premises above mentioned, unto the said Austin Water, Light and Power Company, heirs and assigns forever: and we do hereby bind ourselves, our heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Austin Water, Light and Power Company, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness our hands at Austin, Texas, this 28th day of June, 1887.

Signed, sealed and delivered in presence of:

THE CITY WATER COMPANY, [SEAL]
By
M. D. MATHER,
President. [SEAL]

Attest:
D. LACY B. WICKES,
Secretary City Water Company. [SEAL]

I, D. Lacy B. Wickes, Secretary & Treasurer of Austin Water, Light and Power Company hereby certify that the above and foregoing instrument is a true and correct copy of the original now in my possession.

D. LACY B. WICKES,
Secretary & Treasurer.

(*Endorsement.*) Exhibit E 3.—No. 207 Eq.—Filed Jan. 3, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBIT "E 4" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

44 AUSTIN, TEXAS, June 28th, 1887.

KNOW ALL MEN BY THESE PRESENTS, that the City Water Company, under resolution of its stock holders of date June 23rd, 1887, and in consideration of the sum of One Thousand (1,000) Dollars cash in hand paid by the Austin Water, Light and Power Company, of the County of Travis and State of Texas, the receipt of which is hereby acknowledged, have granted, sold, conveyed and released, all their right, title and interest to the following described property, to-wit: all office furniture, safe, fittings, fixtures,—subject to deeds of trust of date July 1, 1882, and October 1st, 1883.

CITY WATER COMPANY,
By
M. D. MATHER,
Prest.

Attest:
D. L. WICKES,
[SEAL] *Sec'y.*

(*Endorsement.*) City Water Co. to Austin W. L. & Power Co.—Exhibit E 4.—No. 207 Eq. Filed Jan. 3, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBIT "E 5" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

AUSTIN, TEXAS, June 28th, 1887.

KNOW ALL MEN BY THESE PRESENTS, that the City Water Company, under a resolution of its stockholders bearing date June 23rd, 1887, and in consideration of the sum of Eighty Five ($85,000.00) Thousand Dollars, cash in hand paid by the Austin Water, Light and Power Company of the County of

Travis and State of Texas, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed and released unto the said Austin Water, Light and Power Co., all their right, title and interest in and to the following described property, to-wit: one Gaskell pumping engine, one Holly Quadruplex engine, three boilers and building and coal shed, with all connections and fixtures, side-track, tools, situated on lots Nos. 1, 2, 3 and 4, in block No. 187, in the City of Austin,
Travis County, Texas,—subject to deeds of trusts
45 bearing date July 1st, 1882, and Oct. 1st, 1883.

CITY WATER COMPANY,
By
M. D. MATHER,
President.

Attest:
D. L. WICKES,
[SEAL] *Secretary.*

(*Endorsement.*) City Water Co. to Austin Water, Light and Power Co. Exhibit E. 5.—No. 207 Eq.—Filed Jan. 3, 1895. D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBIT "E 6" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

AUSTIN, TEXAS, June 28th, 1887.

KNOW ALL MEN BY THESE PRESENTS, that the City Water Company, under a resolution of its stockholders bearing date June 23rd, 1887, and in consideration of the sum of Eighty Four Thousand ($84,000) Dollars cash in hand paid by the Austin Water, Light and Power Company of the County of Travis and State of Texas, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and released unto the said Austin Water, Light and Power Company, all their right, title and interest in and to the following described property, to-wit: Three filtering wells constructed

of stone, also all suction pipe 12" 20" and 24" in their inner diameter, valves, &c. situated on lots No. 1, 5, 6, 7 and 8 in block 186; also all distributing mains now layed in the City of Austin and its vicinity; also all hydrants and connections, subject to deeds of trusts bearing dates July 1, 1882 and October 1st, 1883.

CITY WATER COMPANY,
By
M. D. MATHER,
Prest.

Attest:
D. L. WICKES,
[SEAL] *Sect'y.*

(*Endorsement.*) City Water Company to Austin Water, Light and Power Co. Exhibit E 6.—No. 207 Eq.—Filed Jan. 3, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

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46 EXHIBIT "F" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

AUSTIN, TEXAS, June 28, 1887.

KNOW ALL MEN BY THESE PRESENTS, that the Austin Electric Light Company, under a resolution of its stockholders bearing date June 27th, 1887, and in consideration of the sum of Seventeen Thousand Five Hundred Dollars ($17,500.00) cash in hand paid by the Austin Water, Light and Power Company, of the County of Travis and State of Texas, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and released unto the said Austin Water, Light and Power Company, all their right, title and interest in and to all the property, dynamos, engines, building, poles, wires, lamps, franchises, contracts, rights of way, &c.—subject to a deed of trust for the sum of Twenty Five Thousand Dollars of date May 1st, 1886; also subject

to a floating debt amounting to the sum of Three Thousand Seven Hundred and Twenty Three and 56/100 ($3723.26) Dollars.

VICTOR MATHER,
President Austin Electric L. Co.

Attest:
D. LACY B. WICKES,
[SEAL] *Sect'y Austin Electric L. Co.*

(*Endorsement.*) Austin E. L. Comp'y. to Austin Water, Light & Power Co. Exhibit F.—No. 207 Eq.—Filed Jan. 3, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBITS "G AND H" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

EXHIBIT "G."

Be it resolved by the City Council of the City of Austin:

That whereas, on the 31st day of March, 1890, the
47 said council enacted an ordinance as follows:

An ordinance, ordering an election to obtain consent of the property tax paying qualified voters of the City of Austin, to the extension by the City Council of the bonded indebtedness of the City of Austin, for the purpose of constructing a system of water works and furnishing lights for the City of Austin.

SECTION 1. Be it ordained by the City Council of the City of Austin, that an election be and the same is hereby ordered and directed to be held in the City of Austin, on Monday the 5th day of May, A. D. 1890, from 9 a. m. until sunset, for the purpose of obtaining the consent of two-thirds of the qualified voters of the City of Austin who pay taxes on property in said City, to an extension of the bonded debt of the city in the sum of one million and four hundred thousand dollars beyond the existing bonded indebtedness of one hundred and twenty five thousand dollars, for the purpose of constructing

a system of water works, and to furnish light for the city and the citizens thereof.

SEC. 2. That the Mayor shall issue his proclamation giving notice of said election and of the object thereof and of the time and place of holding the same for at least thirty days before the day of said election.

SEC. 3. That all qualified voters of the City of Austin who pay taxes on property in said city shall be entitled to vote at said election.

SEC. 4. The polls of said election shall open in the several wards of the city at the following named places, and the following named persons are hereby appointed judges of said election for their respective wards:

For the First Ward: O. Archer, R. C. Shelley, P. L. Meyer.

For the Second Ward: B. S. Pillow, S. G. Kingsbury, F. M. Maddox.

For the Third Ward: Joe Harrell, Sr., E. C. Bartholomew and Henry Hirshfeld.

For the Fourth Ward: T. L. Wren, Clarence Hunter, Charles Caldwell.

For the Fifth Ward: Geo. Warren, Max Maas, S. D. DeCordova.

For the Sixth Ward: J. P. Crain, Louis Marcuse, A. C. Hill.

For the Seventh Ward: H. L. Spain, Joe B. Rogers, W. W. Ardher.

For the Eighth Ward: A. Deffenbaugh, Joe Lee, Joe A. Costa.

48 For the Ninth Ward: Horace Holly, R. M. Castleman, S. H. Weaver.

For the Tenth Ward: S. K. Morley, D. W. Weaver, A. L. Teagarden.

SEC. 5. That the ballots used at said election shall be printed and furnished by the City of Austin as is now provided by ordinance; and each ballot shall have printed thereon the following, to-wit:

In favor of extending the bonded debt of the City of Austin

in the sum of One Million and Four Hundred Thousand Dollars for the purpose of building water works and furnishing light for the city.

Against the proposed extension of the bonded debt of the City.

The voter shall prepare his ballot by marking over with pencil or ink one of the foregoing expressions, and leaving the other as expressing his vote.

SEC. 6. That the said election shall be held in the following places:

In the First Ward: at Glass Building.

In the Second Ward, at Kingsbury's stable.

In the Third Ward, at the City Hall.

In the Fourth Ward, at Goodman's Store.

In the Fifth Ward, at house of Hose Protection Fire Company, No. 3.

In the Sixth Ward, at Dabney's Building.

In the Seventh Ward, at Wellmer's Mill.

In the Eighth Ward, at County Court House.

In the Ninth Ward, at S. H. Weaver's Stable.

In the Tenth Ward, at Hofheintz' Store.

Passed March 31, 1890. Approved April 1, 1890.

JOHN McDONALD,
Mayor.

Attest:

MILTON MORRIS,
City Clerk.

EXHIBIT "H."

AND WHEREAS, pursuant to said ordinance, which was duly approved on April 1st, 1890, by Hon John McDonald, Mayor of said City, and pursuant to a proclamation issued by said Mayor, thirty days prior thereto, an election was duly held on the 5th day of May, 1890, at which election, it appears from the returns, made and declared, counted and duly
49 returned in accordance with law, 1354 duly qualified electors voted in favor of said proposition, and fifty duly qualified electors voted against it.

Now, therefore—be it resolved by the City Council of the City of Austin, and it is hereby declared and ordained that more than two-thirds of the qualified voters of the City of Austin who pay taxes on property, having property in said city, having voted in favor of an extension of the bonded debt of said city in the sum of One Million, Four Hundred Thousand Dollars, for the purpose of constructing a system of water works, and to furnish light for the city and the citizens thereof, and that therefore the power to extend the bonded debt of said City beyond the sum of One Hundred and Twenty-Five Thousand Dollars, has been duly conferred upon the City Council in the manner provided by law.

Adopted May 5, 1890. Approved May 6, 1890.

JOHN McDONALD,
Mayor.

Attest:
MILTON MORRIS,
City Clerk.

(*Endorsement.*) Exhibit G. Exhibit H.—No. 207 Eq. Filed Jan. 3, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBIT "I" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

EXHIBIT "I."

An ordinance, to provide for the issuance and sale of the bonds of the City of Austin to the amount of One Million Four Hundred Thousand Dollars for the purpose of erecting a system of water works and furnishing light by and to the City of Austin, and to regulate the disbursement of their proceeds.

SECTION 1. Be it ordained by the City Council of the City of Austin—that in accordance with the ordinance entitled:

An ordinance ordering an election to obtain the consent of the property tax-paying voters of the city of Austin to the extension by the City Council of the

bonded indebtedness of the City of Austin for the purpose of constructing a system of water works and furnishing lights for the City of Austin; approved April 1st, 1890; and in accordance with the result of an election by the qualified voters by the said City of Austin who pay taxes on property in said City of Austin, duly under said last named ordinance on the 5th day of May, 1890, at which said election more than two-thirds of such voters of the said City of Austin, (to-wit: thirteen hundred and fifty-four for, and fifty against) voted in favor of the issuance of the bonds of the said City of Austin to the amount and for the purpose set forth in the caption of this ordinance; and in accordance with a resolution of the City Council ascertaining and declaring the result of the said election; approved on the 6th day of May, A. D. 1890, the City Clerk, under the direction of the Mayor, is hereby directed to forthwith cause to be prepared one thousand four hundred bonds of the City of Austin, of the denomination of one thousand dollars, gold, each.

SECTION 2. That the said bonds shall be in words substantially as follows, to-wit:

THE STATE OF TEXAS,

No. . *City of Austin.* $1000.00 Gold.

WATER WORKS AND ELECTRIC LIGHT BONDS.

The City of Austin hereby promises to pay to the bearer, one thousand dollars in the gold coin of the United States, on the first day of July, A. D. one thousand nine hundred and thirty, with interest also payable in U. S. gold coin, from date until paid at the rate of five per centum per annum, payable quarterly, on the first day of October, January, April and July, respectively of each year, on presentation of the interest coupons hereto attached at the office of the
in the City of New York, U. S.

This is one of a series of one thousand four hundred bonds of like denomination, date and conditions, numbered 1 to 1400, both numbers inclusive, issued by the City of Austin, Texas, in accordance with an ordinance entitled, an ordinance

to provide for the issuance and sale of the bonds of the City of Austin to the amount of one million four hundred
51 thousand dollars for the purpose of erecting a system of water works and furnishing light by and to the City of Austin, and to regulate the disbursement of their proceeds; approved on the 23rd day of July, A. D. 1890, said last named ordinance having been passed under and in accordance with an ordinance ordering an election to obtain the consent of the property tax paying voters of the City of Austin to the extension by the City Council of the bonded indebtedness of the City of Austin for the purpose of constructing a system of water works and furnishing light for the City of Austin, approved April 1, 1890;—and also in accordance with the result of an election by the qualified voters of the said City of Austin, duly held under said last named ordinance on the fifth day of May, A. D. 1890, at which said election more than two-thirds of such voters of said City of Austin (to-wit: thirteen hundred and fifty four for and fifty against) voted in favor of the issuance of the bonds of said city of Austin to the amount and for the purpose set forth in the caption of the first above named ordinance; and also in accordance with a resolution of the City Council ascertaining and declaring the result of the said election approved on the sixth day of May, A. D. 1890, and under the provisions of the said ordinance authorizing the issuance of these bonds the annual net income, (or so much thereof as may be necessary to discharge the annual interest and sinking fund) from the receipts of the system of water works and light, erected with the proceeds of these bonds, is to be applied, and is pledged to the payment of the same, principal, interest and sinking fund, and full provision is therein made for the levy and collection of the taxes necessary to pay the interest on these bonds and two per cent. sinking fund annually, as required by the Constitution and laws of the State of Texas, and the charter of the City of Austin.

The City of Austin hereby reserves the right to redeem any or all of these bonds at any time after the thirtieth day of June, A. D. 1910, in numerical order, commencing with bond

number one, the redemption thereof to be advertised in one Newspaper published in the City of Austin, Texas, and in one Newspaper published in the City of New York, N. Y., not less than thirty days before the period of such redemption, whereupon said bonds and the coupons thereto attached shall cease to bear interest.

52 *In witness whereof* the City of Austin has caused these presents to be signed by , Mayor of said City, and by , City Clerk of said City, and tested with the seal of said City of Austin, this the first day of August, A. D. eighteen hundred and ninety, at the City Hall of said City.

Mayor.

City Clerk.

Registered , Treasurer of the City of Austin.

(Form of Coupon.)

On the first day of January, A. D. 1891, the City of Austin promises to pay to the bearer at the office of in New York, U. S., Twelve 50-100 Dollars in U. S. Gold coin, being for three months interest on City of Austin Water Works and Electric Light Bond No. .

Mayor.

City Clerk.

On the first day of October, A. D. 1890, the City of Austin promises to pay to the bearer at the office of in New York, U. S., eight 331/3-100 Dollars in U. S. Gold coin, being for two months interest on City of Austin Water Works and Electric Light Bond No. .

Mayor.

City Clerk.

ENDORSED ON BACK OF BONDS.

Constitutional provisions of the State of Texas, governing the creation of debt by Municipal Corporations, Article VI., Section 3.

All qualified electors of the State as herein prescribed, who shall have resided for six months immediately preceding an election within the limit of any city or corporate town shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incor-
53 porated town; provided that no poll tax for the payment of debts thus incurred shall be levied upon the persons debarred from voting in relation thereto.

ARTICLE XI., Section 5. Cities having more than ten thousand inhabitants may have their charters granted or amended by special act of the Legislature and may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent. of the taxable property of said city; and no debt shall ever be created by any city, unless at the same time provision is made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent. thereon.—Charter provisions of the City of Austin governing the creation of debt.

ARTICLE VI., Section 1, Classes 1 and 2. The Mayor and City Council shall have power within the city by ordinance.

First.—To levy and collect an annual tax not exceeding one per centum upon all property within the limits of the city, made taxable by law for State and County purposes, the money raised by said tax to be used for the current expenses, and for the general improvement of the city.

Second.—To raise money on the credit of the city for a special and definite purpose, by issuing bonds of the city or otherwise; *provided*, the bonded debt of the city shall not at any time exceed one hundred and twenty five thousand dollars; and the interest due on bonds and interest bearing warrants issued by the City of Austin, with the interest accrued

thereon shall be at all times considered a part of the bonded debt of the City.

To extend the bonded debt of the city beyond one hundred and twenty five thousand dollars, shall only be done by a special act of the legislature, or by the consent of two-thirds of the tax paying citizens voting at an election ordered for the purpose after thirty days notice by the Mayor, by the authority of and in the method that may be prescribed by the City Council.

All bonds shall specify for what purpose they were issued, and when any bonds are issued by the city, a fund shall be provided to pay the interest, and two per cent. per annum on the principal as a sinking fund to redeem the bonds, or pay them at maturity; and said sinking fund shall not be diverted to, or drawn for any other purpose, and the City Treasurer shall honor no draft drawn on said sinking fund except to pay the interest or redeem the bonds for which said fund was provided.

54

The sinking fund for the redemption of any bonds and the payment of the interest thereon shall be invested, as fast as the same accumulates, in interest bearing bonds of the United States, or of the City of Austin, as the City Council may deem most advantageous; and such bonds and the interest thereon shall be sold when necessary to pay or redeem the bonds for which the sinking fund was established.

Election Ordinance.

An ordinance ordering an election to obtain the consent of the property tax paying qualified voters of the city of Austin, to the extension by the City Council of the bonded indebtedness of the City of Austin, for the purpose of constructing a system of water works and furnishing lights for the City of Austin.

Section 1. Be it ordained by the City Council of the City of Austin, that an election be and the same is hereby ordered and directed to be held in the City of Austin on Monday the 5th day of May, A. D. 1890, from 6 o'clock A. M. until sunset for the purpose of obtaining the consent of two thirds of the qualified voters of the City of Austin, who pay taxes on property in said city, to an extension of the bonded debt of

the City in the sum of One Million and Four Hundred Thousand Dollars beyond the existing bonded indebtedness of one hundred and twenty five thousand dollars, for the purpose of constructing a system of water works and to furnish light for the city and citizens thereof.

SEC. 2. That the Mayor shall issue his proclamation giving notice of said election, and of the object thereof, and of the time and place of holding the same for at least thirty days before the day of said election.

SEC. 3. That all qualified voters of the City of Austin who pay taxes on property in said city shall be entitled to vote at said election.

SEC. 4. The polls of said election shall be open in the several wards of the city at the following named places, and the following named persons are hereby appointed Judges of said elections for their respective wards. * * *

55 SEC. 5. That the ballots to be used at said election shall be printed and furnished by the City of Austin as is now provided by ordinance: and each ballot shall have printed thereon the following, to-wit:

In favor of extending the bonded debt of the City of Austin in the sum of one million and four hundred thousand dollars for the purpose of building water works and furnishing light for the city.

Against the proposed extension of the bonded debt of the city.

The voter shall prepare his ballot by marking over with pencil or ink one of the foregoing expressions, and leaving the other as expressing his vote.

SEC. 6. That the said election shall be held in the following places:

* * * * * * *

Passed March 31, 1890. Approved April 1st, 1890.

JOHN McDONALD,
Mayor.

Attest:

MILTON MORRIS,
City Clerk.

Vote for the issuance of these bonds	1,354
Votes against the issuance of these bonds	50
Total	1,404

(End of endorsement on back of bonds.)

SECTION 3. That the said bonds shall bear date and be issued on the first day of August, A. D. 1890; *provided* that they shall not be delivered and shall not be valid until they shall have been registered by the Treasurer of the City of Austin, or his successor, in a book kept by him for that purpose; such registration to be evidenced by his statement to that effect over his signature, made on each bond at the time of its delivery.

SECTION 4. That the said bonds shall be sold and negotiated for less than their par value.

SECTION 5. That the said bonds shall be sold or negotiated by the Mayor, under the direction of the City Council at such times and in such amounts as may be needed for the prompt and efficient erection of a system of water works and light for the City of Austin.

SECTION 6. That the proceeds of said bonds shall be
56 paid to the City Treasurer who shall keep a true and faithful account of the same, separately from other city funds and accounts.

SEC. 7. That the City Treasurer shall give bond in the sum of One Hundred Thousand Dollars to be approved by the City Council, for the faithful administration of the proceeds of said bonds and of the water works tax and moneys, such official bond to be prepared by the City Attorney.

SEC. 8. That the said fund shall be known as the water works and light fund, and shall not be used, appropriated, paid out or diverted for any other purpose than the erection of the said water works and light system.

SEC. 9. That the said water works and light fund shall be appropriated by the City Council, and warrants shall be drawn thereon, in the manner provided for by ordinance for other city funds.

SEC. 10. That there shall be levied and collected for the

year A. D. eighteen hundred and ninety, and for and during each year thereafter as long as the said water works and light bonds shall be out standing, a tax of one dollar and eleven and one half cents ($1.11½) on the One Hundred Dollars worth of property made taxable by the charter of the City of Austin and the Constitution and laws of the State of Texas, for the purpose of paying the interest and two per centum sinking fund annually on the said bonds.

SEC. 11. That the said tax shall be assessed, levied and collected in the same manner and on the same property, and at the same time as may be provided for by the ordinances regulating taxation for other purposes in the City of Austin.

SEC. 12. That the net income (or so much thereof as may be necessary) from the receipts of the said system of water works and light shall be applied, and they are hereby pledged, to the payment of the bonds herein provided for, principal, interest and sinking fund, in accordance with the terms of the said bonds; and the rates for service of the said system of water works and light shall be so regulated that the receipts shall be sufficient to at least pay the interest and annual sinking fund on the said bonds and the operating expenses of the said works.

SEC. 13. That the said tax shall be known as the water works tax, and the City Collector and the City Treasurer shall
57 keep correct accounts of the same under the heads of Water Works Sinking Fund and Water Works Interest Funds, and shall in other respects collect, manage and disburse the said funds as may be by ordinance provided for other public revenues and funds.

SEC. 14. The City Collector shall give bond in the sum of Twenty Five Thousand Dollars for the faithful discharge of his duties in connection with the said funds, the said bond to be prepared by the City Attorney and approved by the City Council.

SEC. 15. That this ordinance shall be in force and take effect from and after its passage.

Passed July 21st, 1890. Approved July 23rd, 1890.

(*Endorsement.*) Exhibit I.—No. 207 Eq.—Filed Jan. 3, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

EXHIBIT "K" TO ORIGINAL BILL.

Filed Jan. 3, 1895.

NEW AUSTIN CITY CHARTER.

Adopted in 1891.

H. B. No. 636. An Act to Incorporate the City of Austin, to grant it a new charter, and to extend its boundaries.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That the inhabitants of the City of Austin, in Travis County and State of Texas, residing within the territory herein described, shall continue to be, and are hereby constituted a body politic and corporate by the name and style of the City of Austin, and by that name shall have perpetual succession, and shall have all the rights, property, real, personal and mixed, immunities, powers, privileges and franchises now possessed or enjoyed by said city, or herein granted, and be subject to all its present liabilities, and may have a common seal, and alter the same at pleasure, and may sue or be sued, plead or be impleaded, in all courts of law
58 and equity; may contract and be contracted with; may take, hold and convey, lease or acquire or dispose of any property whatever for corporation purposes, within the city limits.

SEC. 2. That the boundaries of the city shall be as follows: beginning on the bank of the Colorado river, at the southwest corner of out lot No. 64, in Division O, thence northerly in a straight line to the northwest corner of out lot No. 16, in Division C, being the Northeast corner of the Wells tract of land Northeast of the old Fair Grounds tract, Thence Northwesterly with the Northeast line of said Wells tract and the State Lunatic Asylum grounds, and the North boundary line of out lot 83, in Division D, to the Northwest corner of out lot 83, division D, thence Southwesterly in a straight line to within ten varas of the Colorado river's ordinary water level (after the completion of the dam now being constructed) due west to Cypress Springs, as said level

has been determined by a line surveyed and marked under direction of the city authorities; thence up the east bank of the Colorado river within ten varas of said line so surveyed, twenty-one miles by following the river; thence across said river at right angles a distance of ten varas from said water level line surveyed and marked on the west side of said river; thence down the Colorado river within ten varas of said surveyed line to a point 1440 varas above the up-stream face of the said proposed dam now being constructed; thence north 75 degrees west 1152 varas; thence due south 1555 varas; thence north 87 degrees and 30 minutes east 556 varas, more or less, to the Colorado river one hundred yards below the lower part of the site of the said dam; thence down the west bank of the Colorado river with its meanders to the mouth of Barton's Creek; thence up Barton's Creek on the west side thereof to a point due west of where the west line of the Isaac Decker league prolonged in its course northerly would intersect Barton's Creek; thence easterly across Barton's creek to the western boundary line of said Decker league; thence southwesterly with the western boundary line of said Decker league to the southwest corner of lot No. 34 in Bradley's subdivision of the Goodrich estate on said Decker league, being also the northwest corner of the D. P. Kinney tract on said Decker league; thence to the southwest corner of the H. J. Doughty tract on said Isaac Decker league; thence
59 easterly in a straight line to the northeast corner of Mrs. E. V. Blum's 213 acre tract, being the southeast corner of the subdivision known as Southside; thence in a northerly direction with the east boundary line of said subdivision and the east boundary line of the Jno. D. McCall and D. C. Stone tracts to the centre of the channel of the Colorado river; thence down said river in a straight line to the place of beginning.

SEC. 3. That the City of Austin shall be divided into not exceeding eleven wards.

The boundaries of the wards shall be fixed by the City Council as soon as this act takes effect, and may be changed from time to time as the City Council may see proper, having

regard to the number of male inhabitants so that each shall contain as nearly as may be the same number; *provided*, that after the first general election under this act, no change in wards or boundaries thereof shall be made within six months next preceding a general election to be held in said city.

ORGANIZATION AND PROCEDURE OF THE CITY COUNCIL.

SEC. 4. That the City Council shall consist of a Mayor and a board of aldermen, who shall hold their office for two years from their installment, and until their successors are elected and qualified.

SEC. 5. That the board of aldermen shall consist of two members from each ward, who shall be residents thereof, to be chosen by the qualified voters of their respective wards.

SEC. 6. That there shall be an election held on the first Monday in December of each year to fill all vacancies occurring, or to occur in the city council from the expiration of terms of office.

SEC. 7. That no person shall be a member of the city council unless he be a citizen of the State of Texas, and shall have resided within the city limits for six months next preceding his election, and shall have been a *bona fide* resident of the ward from which he is elected for at least thirty days preceding his election.

SEC. 8. That if any alderman shall after his election, remove from the ward from which he is chosen, his office shall thereupon become vacant.

SEC. 9. That the city council shall be the judge of the election and qualification of its members, and shall determine contested elections of all city officers made elective under this act, in such manner as may be provided by ordinance; *provided* that no alderman nor the Mayor shall be allowed to qualify or requalify, if he succeeds himself in office, until at a session of the city council, to be held on or after the Saturday next succeeding the election, which shall in all cases occur on Monday, unless his opponent in the election or all opponents, if more than one, shall sooner file a

statement with the City Clerk, that he or they will not contest the election of his or their opponents, naming him.

If, prior to the time for installing such newly elected Mayor or alderman, a contest of his election is filed in writing with the city clerk, stating the grounds for the contest, he shall not be installed until such contest is determined nor shall the council elect the other city officers until such contests are determined; *provided*, that all contested elections shall be decided within fifteen days from the date of the election.

SEC. 10. That the majority of the city council shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members by arrest or in such manner, and under such further penalties as they may prescribe.

SEC. 11. That the city council may determine the rules of its proceedings, punish its members for a wilful violation of its rules, or other disorderly behavior and with the consent of two-thirds of the members elected, expel an alderman, but not a second time for the same offense.

SEC. 12. That the city council shall keep a journal of its proceedings, and whenever practicable, publish the same, or a synopsis thereof, in some newspaper published in the city; and the yeas and nays of the members on any question shall, at the desire of any alderman present, be entered on the journal.

SEC. 13. That upon the passage of all ordinances appropriating money, imposing taxes, increasing, lessening or abolishing licenses, and of ordinances for borrowing money, the yeas and nays shall be entered on the journal, but no ordinance for borrowing money shall pass, except by a vote of two-thirds of the whole council.

SEC. 14. That all ordinances and resolutions of a
61 general character shall be read in the council on three separate days, unless two thirds of the council elected shall dispense therewith.

SEC. 15. That a majority of the members of the whole council shall be necessary to pass an ordinance for any purpose appropriating the sum of five hundred dollars or upwards,

or for passing an ordinance in any wise diminishing or increasing the city revenues.

SEC. 16. That aldermen shall receive as their compensation the sum of five dollars for attending each regular meeting of the city council; *provided* the sum shall not exceed the sum of ten dollars per month; but no alderman nor the Mayor shall, during the term for which he is elected, hold or be eligible to any other office under the city, nor shall any other alderman, during his term of office, be interested directly or indirectly, in any contract or agreement for work to be done, or material furnished, or service to be performed, for which the city is to pay a consideration, or in the purchase or sale of any property by the city for any purpose whatever, and for the violation of any part of section sixteen the penalty shall be expulsion from office on an affirmative vote of two thirds of the whole board of aldermen.

SEC. 17. That all vacancies that shall occur in the Board of aldermen, except by expiration of terms of office, shall be filled in such manner as may be provided for by ordinance. Each alderman shall, before entering upon the duties of his office, take the oath prescribed by the Constitution of the State of Texas, and that he will faithfully discharge the duties of his office.

SEC. 18. That at the first meeting of the city council after each general election, and after contest of election of aldermen, if any there be, are disposed of, the council shall elect one of their members president of the board of aldermen, who shall hold his office for one year from the date of his election and until his successor is elected and qualified.

SEC. 19. That the president of the board of aldermen, in case of the absence of the Mayor from a session of the council, act as presiding officer of the council.

SEC. 20. That in case of the death, resignation or inability to act, or absence of the Mayor from the city, the president of the council shall perform all the duties of Mayor.

62 SEC. 21. That in the absence of the Mayor and of the president of the Council, any alderman may be elected by the members present, to preside, who shall exercise all the rights of the president of the council in such cases.

SEC. 22. That the president of the board of aldermen shall vote only as an alderman.

SEC. 23. That there shall be stated sessions of the city council at least once in each month, and such special meetings as the Mayor or any five members of the council may deem necessary.

SEC. 24. That calls for special meetings shall state the nature of the business to be transacted at the meeting, and shall be read to each alderman to be found in the city, or if an alderman is out of the city a copy thereof left at the place of business of such alderman as may not be seen in the person by the policeman of the City of Austin serving the notice, who shall report in writing to the council, at the hour set for the meeting, whom he has served and how he has served such notices, and the reason for not serving each alderman in person. If it shall appear that two thirds of the aldermen have been served personally, the council may proceed to transact the business mentioned in the call, as if all the aldermen had been personally notified of the meeting. The said notice and the return of the officer shall be recorded in the minutes of the meeting of the council, and shall be evidence of the nature of the call and the service of the notice thereof.

SEC. 25. That all ordinances and resolutions of a general character adopted by the city council, and all acts of the council authorizing or making any contracts, grants or concessions, whether such an act be had or passed in response to petition or proposition, or in any manner whatsoever, and irrespective of the form of such act, shall be subject to the veto of the Mayor.

SEC. 26. That the Mayor may veto any one or more of the items in an appropriation ordinance, and approve the remainder.

SEC. 27. That all ordinances, resolutions and acts of the council, together with such papers as may pertain thereto, shall be placed in the office of the city clerk, and if the Mayor approve thereof, he shall endorse the same "approved" and sign his name to such endorsement, and thereupon such ordinances, resolutions and acts shall go into effect.

63 SEC. 28. That if the Mayor shall fail to approve any such ordinance, resolution or act for a longer period than ten days after it shall be placed in the City Clerk's office, it shall go into effect, unless he shall have within the said period signified his disapproval thereof, or of items of an appropriation ordinance, by written objections there filed with the City Clerk for the consideration of the city council.

SEC. 29. That the vote by which any ordinance, resolution or act so disapproved by the Mayor was passed, shall be considered by the city council either at the next regular meeting thereof held after such disapproval is filed in the Clerk's office, or at any special meeting called earlier for that purpose; and if after such reconsideration, two thirds of the aldermen elected agree to pass such ordinance, resolution or act, or items of an appropriation ordinance, it shall be in force, but not otherwise.

SEC. 30. That the style of the ordinances of the city shall be: "Be it ordained by the city council of the City of Austin."

SEC. 31. That every ordinance imposing a penalty, fine, imprisonment or forfeiture, for violation of its provisions, shall after the passage thereof be published in every issue of a daily paper published in said city for ten days, and shall not take effect until such publication has been completed.

The City Clerk shall note on such ordinances as are required to be published, the fact that the same have been published as required by the charter, and the date of such publication, which shall be *prima facia* evidence of such publication; *provided*, that the provision of this section shall not apply to revision and codification of the ordinances of the city as the council may from time to time adopt.

SEC. 32. All other ordinances and resolutions shall take effect on being approved by the Mayor, or on the termination of the time allowed for vetoing ordinances without being vetoed, unless another time for taking effect be fixed by the ordinance or resolution.

SEC. 33. That in case of a tie vote by the council, the Mayor shall have the casting vote.

64 GENERAL POWERS OF THE CITY COUNCIL.

SEC. 34. That the city council shall have the care, management and control of the city and its property and finances, except as may be herein otherwise specially provided for; and shall have the power to enact and ordain any and all ordinances not repugnant to the constitution and laws of the State, and such ordinances to alter, modify or repeal.

TAXATION.

SEC. 35. That the city council shall have power within the city by ordinance to levy and collect annual taxes not exceeding for any and all purposes, including the taxes levied for the support of the public schools, two and one half per cent. of the property values of said city, as follows:

1. An annual tax, not exceeding one per centum upon all property within the limits of the city, made taxable by law for State and County purposes, the money raised by said taxes to be used for the current expenses and for the general improvement of the city or its property.

2. To raise such further amount as may be necessary to pay interest on two per cent. sinking fund annually on all valid bonded debt of the city.

3. To raise money on the credit of the city for a special and definite purpose, by issuing bonds of the city or otherwise; *provided*, the bonded debt of the city shall only be increased by a special act of the legislature, or by consent of two-thirds of the qualified voters in said city who pay taxes on property, real or personal, in said city. All persons owning property, real or personal, subject to taxation in said city on the first day of Jannary next preceding any election that may be held to obtain such consent, shall be deemed to be persons who pay taxes on property in said city. Such election shall be ordered by the city council, and notice thereof shall be given for at least thirty days by the Mayor in such manner as shall be prescribed by the city council; *provided*, that whatever power the city council may

have possessed or acquired under the charter in force in said city prior to the passage of this act through any election held under said charter to increase the indebtedness of said city is hereby continued and perpetuated in said council, and may be exercised under this act with the same effect that such power might have been exercised under said charter if this act had not been passed, and to no further extent and with no further force or effect under this act than might have been done without the passage of this act; *provided further*, that lands within the limits of the city which have not been laid off into blocks and lots shall not be assessed or taxed otherwise than by the acre, and shall continue to be so assessed and taxed until laid off into lots and blocks by the owners thereof, respectively, and the owners of such lands in laying off the same into lots and blocks shall so arrange the streets that they shall correspond as near as practicable with previously established streets of the city.

SEC. 36. That all such bonds shall specify for what purpose they were issued. Provision shall be made to pay the interest, and not less than two per cent. annually of the principal, to redeem or pay the bonds.

SEC. 37. That neither the money for which said bonds may be sold, nor the money raised to pay the interest and sinking fund thereof, shall be used to divert to any other purposes, and the City Treasurer shall not honor any draft drawn on said interest and sinking fund except to pay the interest on said bonds or to redeem the same, except as hereinafter provided.

SEC. 38. That said sinking fund shall be invested whenever as much as one thousand dollars shall be accumulated, in interest bearing bonds of the United States, or of the State of Texas, or the City of Austin.

SEC. 39. That the city council may and shall have full power to provide by ordinance for the prompt collection of all taxes levied, assessed and due or becoming due to said city, and to that end may and shall enact all ordinances deemed necessary to the levying, imposing, assessing and collecting any of said taxes; and to regulate the mode and manner of making out tax lists and inventories and the appraisement of

property thereon, and to prescribe the oath that shall be administered to each person on such rendition of property; and to prescribe when and how property shall be rendered and the taxes paid; and to fix the duties and define the powers of the assessor and collector of taxes.

SEC. 40. That all taxes due by property owners as appears upon the rolls of said city and upon rolls prepared and completed up to the first day of July, 1891, and not barred by the statutes of limitations, may be collected by suit from delinquents and foreclosure of the lien securing the same, in any court having jurisdiction; but no suit shall be brought for taxes assessed after the first day of July, 1891, except after the time set for sales of taxes as hereinafter provided.

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SEC. 41. That the city council shall have full power and authority to provide by ordinance for the appointment of a board of equalization, and to regulate their duties and to provide for notices to be given to tax payers to appear before such board; and all the determinations of such board shall be final, unless an appeal is taken therefrom to the County Court of Travis County, which may be done by any person, or the agent or attorney of any person aggrieved at the action of the board, by giving notice in writing to said board of such appeal and the grounds thereof within five days after such board shall have concluded its labors and returned the tax list to the office of the assessor and collector of taxes, and by giving a bond payable to the city to be approved by the city assessor and collector, for the sum of fifty dollars, conditioned that said appellant will pay all the costs of such appeal if the action of the board of appraisers should be sustained by the county court, or if the valuation of the property of such appellant shall be raised above the amount at which it was assessed by said board of appraisers. A copy of such bond and such notice of appeal, and a description made by the assessor and collector, of the property of the appellant involved therein shall be filed in said county court, and said case shall be docketed on the civil docket of said court in the name of appellant as plaintiff against the board of appraisers of the city of Austin,

and all such appeals shall be prosecuted to the first term of the county court after the notice of appeal is given, and shall have precedence for trial of all civil cases in said court, and the decision of said county court in such matters shall be final. The list of property and the values thereof as settled by the board of appraisers, or a copy thereof, or so much thereof as may be pertinent to the question at issue may be produced in court to be used in such trials.

SEC. 42. That the city council shall have full power and authority to provide for seizure by the assessor and collector, and sale by him of any personal property for taxes due on personal property without the necessity of any writ 67 and such tax rolls shall be sufficient warrant for such seizure and sale by the assessor and collector of taxes; and to provide by ordinance that any firm, corporation or person owning or controlling property in said city subject to a tax, and failing or refusing to render a list, inventory or appraisement thereof, verified by affidavit, shall be liable to a fine upon complaint to the recorder, in such sum as such ordinance may provide, not exceeding two hundred dollars.

SEC. 43. That the city council shall have full power and authority to pass all ordinances necessary to regulate advertisements and sales by the assessor and collector of property upon which taxes may be unpaid, and to provide for the perpetuation of all proceedings with reference to such advertisements and sales and for execution of titles to purchasers of property at tax sales, and to pass all ordinances necessary to enforce the collection of taxes; *provided*, that such ordinances shall allow any person whose real property has been sold for taxes at least two years from the date of the collector's deed to redeem the same by paying double the amount paid for the same; *provided*, that the city shall not bid in any real property sold for taxes; *provided further*, that any such proceedings so perpetuated shall be received in evidence in any court when the title so conferred by the collector shall be called in question.

SEC. 44. That at any time after the day set for tax sales the city may institute suit for the amount of such taxes due on

such property as may not have been sold, and may foreclose the lien existing for such taxes and penalties that exist in favor of the city at the date of such sale, and the decree ordering such sale shall be so framed as to permit the redemption of said land as provided by the constitution of this State in article 8, section 13.

SEC. 45. That all property, real, personal or mixed, and all moneys and credits within the city, subject to taxation by the laws of the State, shall be subject to taxation by said city against the person who owned the same on the first day of January of each year for which a tax is levied.

SEC. 46. That the city council shall have power to levy and collect an annual occupation tax on all occupations, callings and professions taxed by the State from time to time, to the amount of one-half of the occupation tax levied by the
68 State, and shall have power to provide adequate means and penalties for enforcing collection of same.

SEC. 47. That the city council shall have the power to provide by ordinance for the assessing and levying of the taxes aforesaid, and to determine when taxes shall be paid.

SEC. 48. That no money shall be paid by the city upon any account whatever, to any person or corporation who is in arrears to the city for taxes due.

SEC. 49. That all assessments made upon property shall be a special lien thereon ; and all property, both real and personal, belonging to any delinquent tax payer, shall be liable to seizure and sale for the payment of the taxes due by such delinquent on said property, and such property may be sold for the payment of the taxes due by such delinquent on the same, and no attempt to collect such taxes shall in any way waive or invalidate such lien.

STREETS AND SEWERS.

SEC. 50. That the city council shall have the exclusive control and regulation of all streets, alleys, side-walks and highways within the corporate limits of the city, and shall have power: 1—to abate and remove encroachments thereon in

summary manner; 2—to put drains and sewers therein, and, when necessary, to appropriate private property for that purpose, to be condemned according to the laws relating to condemnation of property by railroad corporations, the city occupying the place of the railroad corporations in such cases; 3—to permit and regulate the laying of gas and water mains therein, and the erection of telegraph and telephone and electric light poles therein; 4—to regulate, establish and change the grade of all side walks, streets and alleys, and to require and compel the cutting down or filling up and raising of such streets, sidewalks and alleys; 5—to construct, regulate and keep in repair all culverts, sewers and crossings and to control and regulate the use of the same; 6—to construct, regulate and keep in repair all necessary sidewalks and foot ways and streets; 7—to grade, cut down and fill up the same; 8—to regulate the use of the same and abate and remove encroachments and obstructions thereon, and to compel the removal of same; *provided*, that whenever the city council has once established a grade for any street, sidewalk, alley
69 or park, and any owner of property abutting thereon has improved such property to conform to such grade, then the city council shall not have authority to change such grade, except by consent of a majority of the owners by feet frontage of the property in front of which it is proposed to change such established grade.

SEC. 51. That the city council shall fix and determine the nature and extent of all sidewalks, streets, drainage and sewerage improvements, and decide as to the kind of material to be used.

SEC. 52. That there may be appointed by the city council five citizens of Austin who shall constitute a board of street and sewer commissioners. They shall hold office until the next general election, and shall act gratuitously. The board shall be allowed, however, the sum of five hundred dollars annually or such portion of the same as they may require to cover expenses, if any, which they may incur in performing the duties of their office.

SEC. 53. That it shall be their duty to prepare and recom-

mend to the city council comprehensive plans for sidewalks, streets, sewers and drainage improvements, including the material to be used, and all other matters pertaining to the construction of the improvements.

SEC. 54. That all matters involving any outlay of as much as five hundred dollars pertaining to any improvement of the character above mentioned, shall first be referred to them, and an interval of not less than ten days after such reference is formally made by the city council, shall be allowed them in which to report upon the same to the said council; and it shall be their duty to examine, pass upon, and report to the city council all plans and specifications relating to such improvements, before the same are finally approved by the city council.

SEC. 55. That they shall also pass upon all bids received on matters relating to said improvements, and recommend such action in reference to the same to the city council as they may deem expedient. They shall also examine and pass upon all street work for the city where the contract exceeds five hundred dollars; and such work shall not be accepted by the city council, until their report on the same has been made to the city council, or until after the expiration of fifteen days from the time when the matter shall have been referred to them.

70 MISCELLANEOUS POWERS OF THE CITY COUNCIL.

SEC. 56. That the city council shall elect, on the nomination of the mayor or any alderman, all officers of the city except the Mayor, aldermen and board of school trustees. The election of said officers of the city to be elected by the city council, shall be at the first regular meeting or at any called meeting for that purpose after the general election of the Mayor, or at any time thereafter; *provided*, no election of officers by the council shall occur until after the time for filing contests for elections of aldermen, as provided for in this act, shall have expired, or until contests have been waived, as provided for in this act, and not until after the termination of any contest of election of aldermen.

SEC. 57. That the city council shall have power by ordinance:

1. To make regulations to prevent the introduction or spreading of any contagious disease within the city; to make quarantine ordinances for that purpose, and to enforce them within the city and within ten miles thereof, and to enforce vaccination, and to establish hospitals and make regulations for the government thereof within and without the city limits, and to make and enforce all other necessary regulations to secure the general health of its inhabitants.

2. To establish or erect, or cause to be established or erected, markets and market houses; to designate, regulate and control market places and privileges, and to inspect within or beyond the city limits, and determine the mode of inspecting cattle, meats, birds, fowl, fish, vegetables, fruit, milk, and to seize and destroy any decayed or unwholesome fruit or vegetables, any impure or unhealthy or unwholesome meats, birds, fowls, or fish, and to regulate, license, control or prevent the sale or keeping for sale on public streets, squares and alleys of any article of food or drink, or any goods, wares or merchandise of any kind whatever.

3. To define what shall be a nuisance in the city, and to punish the authors thereof by penalties, fines and imprisonment.

4. To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

5. To co-operate with the commissioner's court of Travis county in making such improvements connected with
71 the city and county as may be deemed by the city council and commissioners' court necessary to improve the public health and to promote efficient sanitary regulations; and by mutual agreement they may provide for the construction of such improvements, and the payment therefor.

6. To regulate the burial of the dead, and to prohibit public funerals in cases of death from contagious or infectious disease; to purchase, establish and regulate one or more cemeteries within or without the city limits; to regulate the

registration of marriages, births and deaths; to direct the returning and keeping of bills of mortality, and to impose penalties on physicians, ministers, sextons and others, for any default in the premises.

7. To provide for the erection of all needful buildings for the use of the city within its limits, and to determine when it is necessary to acquire property, or the use thereof, by the power of eminent domain, for all purposes for which the city may lawfully exercise such power.

8. To license and regulate auctioneers, grocers, merchants, retailers, hotels and boarding houses and bakeries, and to license and regulate or suppress ordinaries, hawkers, peddlers, brokers, pawn brokers and money changers.

9. To license and regulate hacks, carriages, omnibuses, wagons, carts and drays, and fix the rate to be charged for carriage of persons and for wagonage, cartage and drayage of property.

10. To license and regulate theatrical and other exhibitions, shows and amusements.

11. To license and regulate billiard tables, restaurants, drinking houses or saloons, and all places or establishments where intoxicating or fermented liquors are sold, and to regulate their location, and to restrain and suppress street beggars, disorderly houses, lotteries and all fraudulent devices and practices.

12. To suppress gaming and gambling of all kinds and descriptions, and to prevent the same.

13. To prohibit bawdy houses, houses of prostitution and assignation houses, and to punish prostitutes and keepers of houses of prostitution within the city.

72 14. To provide for the prevention and extinguishment of fires, and to organize and establish fire companies, also to regulate, restrain and prohibit the erection and repair and maintenance of wooden buildings in any part of the city, and to declare all wooden buildings which they may deem dangerous on account of fire, nuisances, and to require the same to be removed in such manner as the council may direct.

15. To regulate and prevent the carrying on of manufactories dangerous in causing or producing fires; to appoint fire wardens and property guards, with power to remove and keep away from the vicinity of any fire any suspicious persons lurking near the same, and to compel any person or persons present to aid in extinguishing the fire, or in the preservation of property exposed to the same, and to prevent goods from being purloined thereat, and with such other powers and duties as may be prescribed by ordinance.

16. To compel the owners of houses and other buildings to have scuttles upon the roof of any such buildings or houses, and stairs and ladders leading to the same.

17. To create a board of fire commissioners.

18. To regulate and describe the manner of building partition and parapet walls and of partition fences.

19. To establish standard weights and measures, and to regulate the weights and measures to be used in the city in all cases not otherwise provided for by law.

20. To provide for the inspection of lumber, the measurement thereof, and other building materials.

21. To provide for the inspection and weight of hay, the measure of charcoal and other fuel to be used in the city.

22. To regulate and prescribe the duties and powers and compensation of all officers and employees of the city, in accordance with the limitations of this charter, and to require bonds from them.

23. To create such offices and employ such agents as they may deem necessary for the good government and interest of the city, and to change or prescribe additional duties of all such officers and agents; *provided*, that the compensation of officers and employees shall not be increased nor diminished during their term of office.

73 24. To provide for the taking of an enumeration of the inhabitants of the city.

25. To provide for the removal from office of any person holding an office created by this act, or by ordinance, not otherwise provided for.

26. To fix the compensation and regulate the fees of all

jurors and witnesses, to impose fines, forfeitures and penalties for the breach of any ordinance, and to provide for the recovery and appropriating of such fines and forfeitures, and the enforcement of such penalties; *provided*, that no penalty shall exceed a fine of two hundred dollars and imprisonment not exceeding fifteen days for any one offense.

27. To erect a work-house and prisons and a house of correction, and to provide for the regulation and government thereof.

28. To regulate and license all ferries and toll bridges within the limits of the city, except that portion of the Colorado river above the point where the northern boundary corporate line of the city calling to run westwardly, would intersect the Colorado river, if prolonged westwardly, nor shall any ordinance be enforced prohibiting hunting or fishing on said portion of the river.

29. To prevent and restrain any riot, disturbance or disorderly assembly in any street, house or place in the city.

30. To use, regulate, improve, grade and control all grounds owned by the city within its limits.

31. To regulate the size, number and manner of construction of doors and stairways of theatres, tenement houses, audience rooms, public halls, and all buildings used for the gathering of large numbers of people, whether now built or hereafter to be built, so that they may be convenient, safe and speedy exits in case of fire.

32. To require the construction of suitable fire escapes on or in hotels, lodging houses, factories and other buildings, whether now or hereafter to be built.

33. To authorize one or more officers, agents or employees of the city to enter into and open all buildings and premises for the purpose of examining and discovering whether or not the same are dangerous on account of fire, or in an unclean state, and cause the defect to be remedied and filth and trash to be removed; and, generally the council shall have the power to establish such regulations for the prevention and extinguishment of fires as it may deem expedient.

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34. To prevent, prohibit and suppress horse racing, immoderate riding or driving in the streets; to prohibit and punish abuse of and cruelty to animals of every kind; to compel persons to fasten their horses or animals attached to vehicles or otherwise, while standing or remaining in the streets or other public places.

35. To prohibit the rolling of hoops, flying of kites, firing of fire-crackers, or fire works of any kind, or any other amusement having a tendency to annoy persons passing in the streets or on the side walks; to restrain and prohibit the ringing of bells, the blowing of horns, whistles or bugles, the crying of goods, and all other noises, practises and performances tending to collect persons in the streets or sidewalks by auctioneers and others for the purpose of business or otherwise.

36. To prevent all boxing matches, sparring exhibitions, cock fighting and dog fighting, and punish all persons making such exhibitions.

37. To regulate and prevent drumming on the streets or sidewalks, railroad platforms or other public places.

38. To require the owners of private drains, sinks and privies to fill up, clean, drain, relay, alter, repair, fix and improve the same as they may be ordered by resolution or ordinance so as to prevent the same being or becoming nuisances, and to impose penalties on persons not doing the same; and if there be no person in this city upon whom such order can be served, the city can have the work done, and the cost of the same shall be a lien on the property, taxed up against and collected in such manner as the city council may direct.

39. To build, own and operate street railroads, within and beyond the city limits.

40. To preserve order and prevent noise and confusion in and about the several depots on the arrival and departure of trains, and to make and regulate stands for vehicles at said depots and other public places.

41. To prohibit and regulate the driving of cattle or other animals through the streets of the city.

42. To inspect the construction of all buildings in said city, and to compel the connection of all buildings with

sewers when such buildings are in a sewerage district where sewers are in operation.

43. To regulate and locate the erection of all poles in the city, and cause the same to be changed, whether telegraph, telephone, electric light or otherwise.

44. To regulate the speed of locomotives, engines and other cars and vehicles in the city.

45. To direct and control the laying of railroad tracks, turnouts and switches, and require that they be constructed and laid so as to interfere as little as possible with the ordinary travel and use of the streets, and to require that they be kept in repair.

46. To erect, construct, build and operate a water and electric light system to supply the city and its inhabitants with water and electric light by constructing and maintaining a reservoir of water in and about the channel of the Colorado river, within and without the city limits, by erecting a dam across the same where such dam is now being constructed, to serve as a reservoir and to furnish power to operate an electric light system, and to build such other reservoir as may be necessary at such an elevated point within or without the limits of the city as may be necessary to supply the higher portions of the city with water. That for the purpose of constructing such water and light system the city shall have the power to take, hold and acquire such property within or without the limits of the city as may be necessary for the city to obtain in order to build such system, or any part thereof; but no property shall be taken, overflowed with water or otherwise damaged, by the city, within or without the limits for such purpose, without the consent of the owner thereof, except by due process of law, and upon making adequate compensation for the property so taken or damaged or over flowed. When the owner of property which shall be overflowed or damaged by the construction of such system of water and light works, or which it may be necessary for the city to acquire, cannot agree with the city as to the amount to be paid for injury to property or for over flowing the same, or the price which the city should pay to acquire such

property, the city may condemn such property as it may be necessary for it to acquire for such purposes, and have the damages assessed which the city should pay for injury to property to be over flowed by water or otherwise injured, in the
76 manner that railroad corporations are now or may from time to time be authorized to condemn property, and may in like manner have the damages to be paid for the property injured or overflowed assessed and established; the city occupying the place of the railroad corporation in such proceedings.

47. To regulate the use of locomotive engines; and to direct and control the location of cables and all other railroad tracks, and all steam railroad tracks, and to require railroad companies of all kinds to construct, at their own expense, such bridges, turnouts, culverts and crossings as the city council may deem necessary.

48. To regulate the speed of railroad trains in the city limits, and their stops at the street crossings, and require said companies to keep the streets through which they run in repair.

49. To regulate the running of horse railroad cars, or cars propelled by dummy engines, or other power, and laying down tracks for the same, the transportation of passengers thereon, the form of rails to be used.

50. To establish and regulate public pounds, and to regulate and prohibit the running at large of horses, mules, sheep, swine, goats, geese, dogs and other animals, and to authorize the distraining, impounding and sale of the same for the costs of the proceedings and the penalty incurred, and to order their destruction when they cannot be sold, and to impose penalties on the owners or harborers thereof for violation of any ordinance.

51. To provide for the holding of election by the people, and to regulate the manner of holding the same; and every male inhabitant in the city qualified to vote for State and County officers in Travis County who shall have resided six months in the limits of the city, shall be qualified to vote for city officers under this act.

City Officers.

The Mayor.

Sec. 58. That there shall be a Mayor of said city, shall be elected by the voters of the city on the first Monday in December, 1891, and on the first Monday in December every two years thereafter, and who shall hold his office for the term of two years from the time of his election and until his
77 successor shall have been elected and qualified. The Mayor shall be the chief executive officer of the city. The Mayor shall receive no salary or fees, except the sum of six hundred dollars per annum, payable monthly, which shall be allowed him for the reimbursement of the expenses incident to or growing out of his position.

Sec. 59. That no person shall be Mayor who at the time of his election is not possessed of the qualifications required for an alderman, or who holds any lucrative office under the authority of the United States or any State; he shall before entering upon the duties of his office, take the oath prescribed by the constitution of the State, and to faithfully and impartially perform his duties.

Sec. 60. That when two or more persons shall have an equal number of votes for the office of Mayor, a new election shall be ordered, except when the election is contested, and whenever an election for Mayor is contested, the city council shall determine the same.

Sec. 61. That whenever any vacancy shall happen in the office of Mayor within three months of the time of holding a general election in the office of Mayor, it shall be filled by election by the city council, of some person not a member of the council, in which case such Mayor shall hold office for the unexpired term of office only. Vacancies in the office of Mayor occurring more than three months before a general election, shall be filled by a special election by the qualified voters of the city.

Sec. 62. That the Mayor or any other officer of the city may be removed from office for any malfeasance in office, by a majority of two-thirds of the full board of aldermen, after

trial and conviction. The council shall be the judge of what shall constitute malfeasance in office.

SEC. 63. That the Mayor shall sign the commissions and appointments of all persons elected by the city council.

SEC. 64. That the Mayor shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty, and he may suspend, and by and with the consent of two-thirds of the whole board of aldermen, remove from office any person holding office made elective by the city council by this act, or hereafter created by ordinance. He shall have power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers; it shall be his duty to make report to the council, in writing, regarding any error or deficiency he may discover in said accounts
78 and papers.

SEC. 65. That the Mayor shall preside at all meetings of the city council, except as herein otherwise provided, and shall have a casting vote when the council is equally divided, and not otherwise.

SEC. 66. That the Mayor shall from time to time communicate to the city council information, and recommend such measures as in his opinion may tend to the improvement of the finances, health, security, ornament and general prosperity of the city.

SEC. 67. That the Mayor shall take care that the laws of the State and the ordinances of the city are duly enforced respected and observed within the city, and he is hereby authorized to call on every male inhabitant of the city over eighteen years of age and under the age of fifty years to aid in enforcing the laws and ordinances of the city, and any person who shall not obey such call, shall forfeit to the city a fine not exceeding two hundred dollars.

SEC. 68. That the Mayor, by and with the consent of the council, shall have power to remit fines and forfeitures, and to grant reprieves and pardons for all offenses arising under the ordinances of the city.

SEC. 69. That the Mayor shall have power to solemnize marriages, and to administer oaths of office.

SEC. 70. That in case of the temporary absence or illness of the recorder, or in case of vacancy of the office of Recorder, the Mayor shall be *ex-officio* Recorder, to try all cases of violation of the city ordinances, and it shall be his duty to do so, unless such vacancy, temporary or otherwise, shall have been filled as provided in this act.

OTHER OFFICERS.

SEC. 71. That there shall be a City Marshal, a City Clerk, a City Attorney, a City Assessor and Collector, a City Physician, a Treasurer, a Recorder, a City Engineer, a Superintendent of Streets, and such other officers, agents and employees of the city as may be now or hereafter provided for by the city council by ordinance. The terms of the officers mentioned in this act shall be for two years from the first Monday in December of the year of their election. They shall be elected by the city council, as soon as may be after the first Monday in December, every two years. They shall hold their offices until their respective successors are elected
79 and qualified.

City Marshall.

SEC. 72. That the Marshal of the City shall be *ex-officio* chief of Police, and he shall either in person or by deputy attend upon the recorders court while in session, and upon meetings of the city council, and shall promptly and faithfully execute all writs and process issued to him. He shall have like power with the sheriff of the County to execute the writ of search warrant. He shall be active in quieting riots, disorders and disturbances of the peace within the limits of the city, and shall take into custody all persons so offending against the peace of the city, and shall have authority to take suitable and sufficient bail for the appearance before the Recorder's court of any person charged with an offense against ordinances or laws of the city. It shall be his duty to arrest without warrant, all violators of the public peace, and all who obstruct or interfere with him in the execution of the duties

of his office, or who shall be guilty of any disorderly conduct or disturbance whatever in his presence, or upon complaint of any citizen. To prevent a breach of the peace or preserve quiet and good order, he shall have authority to close any theatre, barroom, drink house, or any other place or building of public resort, and in the prosecution and suppression of crime and arrest of offenders he shall have, possess and exercise like power, authority and jurisdiction, as the sheriff of the county under the laws of the State. He shall receive a salary of fifteen hundred dollars per annum, payable in monthly installments. He shall give a bond, payable to the said city, with good security, conditioned for the faithful performance of his duties in accordance with the charter and ordinances of the city, and in such amount as the city council may require, said bond to be approved by the city council. He shall perform such other duties and possess such other powers, rights and authority as the council may by ordinance require and confer.

City Clerk.

SEC. 73. That it shall be the duty of the city clerk to attend all meetings of the city council, and to keep accurate minutes of the proceedings thereof in a book to be provided for that purpose, to preserve and keep in order, all books, papers, documents, records and files of said council, to countersign all commissions and licenses issued by the Mayor, and to keep a record of them, and to draw all warrants on the Treasurer, and countersign the same, and to keep accurate accounts thereof in a book provided for that purpose.

SEC. 74. That he shall have the custody of all ordinances of said city, and of all seals of the corporation, and shall only affix the same to the obligations of the city by order of the proper authorities of the city.

SEC. 75. That the City Clerk shall perform such other and further duties as may be required of him by the council by resolutions, ordinances or otherwise, and give such bond as the city council may prescribe.

SEC. 76. That he shall receive an annual salary of fifteen hundred dollars, payable monthly.

SEC. 77. That the City Attorney shall be a regularly licensed lawyer, who shall have received his license to practice law in this State more than five years before his election. He shall attend to all cases in any court in this State wherein the city may be a party in interest, unless the council otherwise provides. He shall draw all ordinances when requested to do so by the Mayor or any alderman, and inspect and advise upon all papers and documents involving any interest of the city. He shall be the legal adviser of the Mayor, the city council, or any committee or board of the city, and of all city officers and authorities upon legal questions touching their official duties.

SEC. 78. That the City Attorney shall receive an annual salary of fifteen hundred dollars, payable monthly, and shall receive such fees as the council may allow, and shall perform such duties as the council may direct. He may employ an assistant at a salary of not exceeding five hundred dollars per annum, to represent him in the Recorders Court and elsewhere.

The City Engineer.

SEC. 79. That the City Engineer shall inspect and pass upon the construction of all the public works ordered by the city council, and make out plans, specifications and estimates therefor; he shall do the surveying and engineering
81 ordered by the city council; he shall preserve all plans, maps, notes, surveys, books, papers and documents, and other things pertaining to his office, made by him, or in his charge, and deliver the same to his successor in office.

SEC. 80. That the City Engineer shall have such power, and perform such other duties as may be prescribed by the council by resolutions, ordinances or otherwise.

SEC. 81. That he shall receive as compensation the sum of twelve hundred dollars per annum, payable monthly, and is prohibited from receiving a fee from any private person for giving the grade and lines of streets, alleys, sidewalks and locations, and grades and sewers.

City Assessor and Collector.

SEC. 82. That the City Assessor and Collector shall assess and collect the city taxes and occupation licenses, and shall pay the same over to the City Treasurer promptly as collected, taking duplicate receipts therefor, one of which he shall retain and the other he shall return to the city council. He shall, monthly, or oftener, if required, make a detailed report to the city council of all collections made by him.

SEC. 83. That he shall be vigilant and see that no business is carried on without the license or occupation tax due therefor shall have first been paid. He shall be responsible for all acts of his deputies; he shall be vigilant in collecting all delinquent taxes, and enforce their collection as herein provided, and as may be provided by ordinance. He shall give bond in such amounts and in such form as the council may prescribe, with good and sufficient securities.

SEC. 84. That the council may require a new bond if in their opinion the existing bond is insufficient, and whenever such bond is required, he shall perform no official act until such bond shall have been approved.

SEC. 85. That he shall receive as compensation the sum of eighteen hundred dollars a year, payable monthly, exclusive of the salaries of assistants and deputies.

SEC. 86. That he shall have all the powers and perform all the duties herein provided, and such others as the council may confer and prescribe.

Treasurer.

SEC. 87. That the City Treasurer shall give such bond
82 or bonds as may be required, conditioned for the faithful discharge of his duties. He shall receive and keep all money belonging to the city, and make all payments of the same upon warrants of the Mayor, assisted by the City Clerk.

SEC. 88. That he shall render a full and correct statement of his receipts and payments to the city council at their first regular meeting in every month, and at such other times as the council may require. He shall perform such other acts and

duties as the council may require, and receive an annual salary of six hundred dollars, payable monthly.

The Recorder.

SEC. 89. That the Recorder shall be the Chief Judicial magistrate of the city, and as such, shall hold a court within said city by the name of Recorder's court of the City of Austin, which said court shall have jurisdiction and cognizance of all misdemeanors, breaches of the peace, infractions of the ordinances, and all other charges arising under the ordinances of the city, subject, however, to an appeal to the county court in the same manner as appeals are taken and granted from justice's courts to the county court under the general laws of the State.

SEC. 90. That the recorder may require of any person arrested under this act, or the ordinances of the city, a bond to keep the peace, with two good and sufficient securities, which bond shall be payable to the city of Austin. He shall have full power and authority to issue subpœnas for witnesses and compel their attendance by process of attachment. He may issue warrants of arrest, search warrants, executions and other process known to law that justices of the peace of this State may lawfully issue, and he may punish all contempt by fines and imprisonment or both.

SEC. 91. That he shall have full power to administer official oaths and all other oaths or affirmations, and give certificates thereof. The Recorder shall be *ex-officio* Justice of the Peace, and shall possess and exercise within the city limits in criminal cases in all the powers and duties of such officers, but in no case shall he entertain jurisdiction in civil suits.

SEC. 92. That the Recorder shall be conservator of
83 the peace, and his court shall be open every day except Sunday and legal holidays, to hear and determine any and all cases cognizable before him, and shall have power to bring parties before him forthwith for trial. Parties arraigned for violation of city ordinances, demanding a trial by jury, shall deposit with the court the sum of three dollars security

for the payment of the cost of such jury, unless they shall make oath that they are unable to pay or secure the same; any person convicted of an offense under the provisions of this act, or the ordinances of the city, shall be punished as may be prescribed by ordinance, not to exceed the punishment which the legislature may lawfully authorize a Recorder of a city to impose.

SEC. 93. That the Recorder shall perform such other duties as may be prescribed by any ordinance of the city, and shall receive a salary of not exceeding fifteen hundred dollars.

SEC. 94. That the Recorder shall be a licensed lawyer, and competent to discharge the duties required of him by the charter and ordinances of the city.

SEC. 95. That the fines imposed in the Recorder's Court for violation of the city ordinances shall not be less than five dollars, nor more than two hundred dollars for each and every offense, and no cost shall be taxed against any person convicted therein.

STREET SUPERINTENDENT.

SEC. 96. That there shall be a Superintendent of Streets elected by the City Council at the time other officers are elected. He shall hold his office for the term of two years and until his successor has been elected and qualified; *provided*, that the present street commissioner shall be Superintendent of Streets until the next general election.

SEC. 97. That he shall receive a salary of not exceeding fifteen hundred dollars per annum, payable monthly.

SEC. 98. That the Superintendent in the absence of direction from the board of street commissioners, or from the council or city engineer, shall, with the advice of the Mayor, have general supervision of all work on the streets and bridges of the city within such limit of expense as
84 the council may prescribe.

SEC. 99. That he shall perform such other duties as the city council may, from time to time prescribe.

GENERAL PROVISIONS.

SEC. 100. That the city council shall have power, subject to the restriction herein contained, to make all ordinances which

shall be necessary and proper for carrying into effect the powers specified herein; *provided*, that the council shall have no power to prohibit the owners of property abutting on the Colorado river from fishing in the river and resorting thereto for water, and having access thereto for themselves and stock.

SEC. 101. That all ordinances of the City of Austin and rules and regulations of the city council and other departments of the city which shall be in force when this act takes effect, and which are not in conflict with the same, shall remain in full force and effect until amended, altered or repealed by the city council.

SEC. 102. That all members of the council and other officers of the city shall continue in office until the expiration of the time for which they were elected, respectively, and until their successors are elected and qualified.

SEC. 103. That the fiscal year of the city shall be from and including the first Tuesday in December in each year, to and including the first Monday in December of the next succeeding year; and all receipts of money during such fiscal year shall be regarded as funds belonging to such year, whether collected from the taxes or other dues of a previous year or not, and all taxes and other dues, remaining due and uncollected at the expiration of one fiscal year, shall be regarded as resources of the next succeeding fiscal year.

SEC. 104. That the receipts of money during any fiscal year other than from special funds provided to pay interest and sinking funds on bonds of the city, shall be applied to the payment of expenses and indebtedness incurred during such fiscal year; and no debt, other than such as may be authorized by a vote of tax payers as is provided for in this act, shall be incurred, to be paid after the end of the fiscal year in which it may be incurred.

SEC. 105. That no contract shall be made involving
85 the payment of money by the city after the termination of the fiscal year in which it is made, except for constructing public works or other improvements, which, in the judgment of the council, cannot be practically completed before the end of the fiscal year; but no contract made for such public works

or improvements shall in any event involve the payment of a greater sum, after the close of the fiscal year in which such contract is made, than may be paid out of the fund belonging to such fiscal year, and in all such cases an appropriation shall be made out of the funds for the pending fiscal year for the payment of the amount the city will become liable for if such contract is performed; such appropriation shall be made at the time such contract shall be executed, or the contract shall not be valid; *provided*, that this section shall not apply to the expenditure of any special funds raised by the issuance of bonds for special purposes.

SEC. 106. That in order to make these restrictions effective, the council shall, within two months after the beginning of each fiscal year, and after the salaries of officers and regular employees shall have been fixed for the year, cause to be made or adopt an estimate of the probable income from all sources which will be collected for the general fund during the fiscal year, and of the expenditures to pay salaries and wages of officers and regular employees, and of the amount required to meet the other ordinary expenses of the city government, not including work on streets and bridges or other public improvements, said estimates shall be spread upon the minutes of the council when adopted, and may be amended when the council may deem them incorrect.

SEC. 107. That after the adoption of the said estimates it shall be unlawful for the city council to so appropriate sums out of the general funds as to reduce the general fund below the amount which, if said estimate be taken as correct, will pay the said estimated expenses of the city government for the pending fiscal year.

SEC. 108. That after two months from the beginning of any fiscal year no appropriation shall be made for any purpose other than to pay the regular salaries of officers and employees, and expenses of the hospital, without such estimate of the council being in force, as provided for in this act.

SEC. 109. That the city Clerk shall keep posted in a
86 conspicuous place in the council room, a copy of the estimates provided for in the preceding sections, and shall note in connection therewith the aggregate of each appropri-

ation ordinance affecting the general funds, passed by the council, after the same takes effect.

SEC. 110. That unexpended balances of appropriations remaining after the purposes for which they were made, have been accomplished or abandoned, shall be reported to the City Clerk by the committee or officers of the city having the subject in charge, and when so reported, such unexpended balances of appropriations shall be noted in connection with said estimates so posted in the council room.

SEC. 111. That no money shall be paid out of the city treasury except by warrant, signed by the Mayor and attested by the City Clerk.

SEC. 112. That the city council shall cause to be published, within a month after the end of each fiscal year, a full, complete and detailed statement of all moneys received and expended, classifying each receipt and expenditure under its proper head.

SEC. 113. That the inhabitants of the city of Austin are hereby exempted from working on public roads beyond the limits of the city.

SEC. 114. That this act is declared a public act and may be read in evidence in all courts of law and equity in this State without proof.

SEC. 115. That the ordinances, resolutions and by-laws of the city council may be proved *prima facie* by a book of printed ordinances of the city appearing to be printed by the authority of the city, or by copies of ordinances certified by the City Clerk to be true copies of such ordinances or the record thereof.

SEC. 116. That the city of Austin may institute and prosecute suits without giving security for costs, and may appeal from judgments without giving *supersedeas* or cost bonds.

SEC. 117. That this act shall not be construed to effect in any manner the general laws governing the levying of taxes for public schools in cities, or to affect the action taken or *status* required by the city of Austin thereunder, or the title to school property, the control of school funds and money,

or the election of the board of school trustees as now established, or to affect the continuation in office of the
87 present school trustees of the city of Austin, and the election of a board of school trustees shall be as heretofore in said city, and their powers and duties shall remain as under the existing laws.

SEC. 118. Nothing herein contained shall ever be construed to in any manner suspend, modify or abridge any penal laws of this State, but the penal laws of this State shall ever be in full force and effect, and in no manner repealed or suspended by any provision of this act, but the council may enact any ordinance not in conflict with the penal laws of this State.

SEC. 119. That the additional territory added to the city of Austin and not heretofore embraced within the corporate limits of Austin shall not be charged with or liable for any debts of the city of Austin incurred prior to the first day of May, A. D. 1890.

SEC. 120. That the jurisdiction and powers conferred on the city of Austin by this act shall supersede the authority of each and all other municipal corporations heretofore exercising any authority over any part of the territory included within the boundaries of the city of Austin as prescribed by this Act.

SEC. 121. That the fact that Austin without this act has not sufficient power of eminent domain to enable her to progress with her important water and light system now in progress of construction without speedy grant of which power she is in danger of suffering great loss from delay, creates an imperative public necessity and emergency authorizing the suspension of the constitutional rule, requiring bills to be read on three several days and requiring that this act take effect and be in force from and after its passage, and it is so enacted.

R. T. MILNER,
Speaker of the House of Representatives.

GEO. C. PENNLETON,
President of the Senate.

I hereby certify that the within named H. B. No. 636 originated in the House and passed the same by a two-thirds vote, ayes 78, noes 1, April 1st, 1891.

GEO. W. FINGER,
Acting Chief Clerk, House of Representatives.

88 I hereby certify that the within named H. B. No. 636 passed the Senate by a two-thirds vote, ayes 24, noes 0, April 3rd, 1891.

A. M. KENNEDY,
Secretary of the Senate.

Received in the Executive Office this 3rd day of April, A. D. 1891, at six o'clock.

R. B. LEVY,
Private Secretary.

Received at the Department of State at 2.15 o'clock P. M., April 16th, A. D. 1891.

G. W. SMITH,
Secretary of State.

(NOTE:—The foregoing act was presented to the Governor of Texas for his approval on the third day of April, A. D. 1891, and was not signed by him, nor returned to the House in which it originated, with his objections thereto; nor were any objections thereto filed by him in this office after adjournment of the Legislature within the time prescribed by the constitution. This act thereupon became a law without his signature.

GEO. W. SMITH,
Secretary of State.)

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, Geo. W. Smith, Secretary of State of the State of Texas, do hereby certify that the foregoing ninety pages, from one to ninety both inclusive, written only on one side of the paper, is a true and correct copy of original enrolled H. B. No. 636, entitled: "An Act to incorporate the City of Austin, to grant it a new charter and to extend its boundaries," now on file in this department.

Witness my official signature and the seal of State affixed at the city of Austin, this 27th day of April, A. D. 1891.

GEO. W. SMITH,
[L. S.] *Secretary of State.*

(*Endorsement*). Exhibit K.—No. 207 Eq.—Filed Jan. 3, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

89 DEMURRER OF DEFENDANTS.

Filed February 4, 1895.

IN UNITED STATES CIRCUIT COURT FOR THE WESTERN DISTRICT OF TEXAS, AT AUSTIN.

The Penn Mutual Life Insurance Company et al.,
vs.
The City of Austin et al.
No. 207
In Equity.

The demurrer of the city of Austin, of John McDonald, Mayor of said City, and of W. C. Walsh, Frank Hamilton, S. K. Morley, A. P. Wooldridge, John W. Maddox, M. A. Taylor and John McDonald, constituting the board of public works of said city of Austin, being all of the defendants to the bill of complaint, save and except the Austin Water, Light & Power Company.

The defendants herein, respectively, by protestation, not confessing or acknowledging all or any of the matters and things in said Complainants' Bill to be true, in such manner and form as the same are therein set forth, demur thereto, and for causes of demurrer show that said complainants have not, in and by said bill, made or stated such a cause as does or ought to entitle them to any such relief as is therein sought and prayed for, from or against these defendants or any of them; that said bill is without equity whatsoever, the matters and things therein complained of, if entitling complainants to relief of any kind, being cognizable in a court of law and not in a court of equity—the said bill being wholly without equity. And these defendants say and each of them says that said bill is insufficient for the following, among other reasons:

First.—Because the contract set out in complainant's bill is and ever has been void under the Constitution and laws of

the State of Texas, the city of Austin having no power, under its charter or under the Constitution and laws of the State of Texas, to enter into such contract.

Second.—Because the city of Austin, at the time of making of the alleged contract, had and now has express authority and power under its charter and acts of incorporation to construct, build, maintain and operate a system of water and light works, and said right on the part of the City has been
90 expressly adjudicated and determined by the Supreme Court of said State.

Third.—Because the city of Austin has not now and, under the Constitution and laws of the State of Texas, did not have at the date of the alleged contract, any power to exempt the property of the City Water Company or the Austin Water, Light and Power Company, or any part thereof from taxation, or commute taxes levied thereon, and the attempt so to do in said contract is and was void, and said city is now and was at the time of the alleged levy of said tax under obligation and required by the Constitution and laws of said State and the charter of said City to impose taxes upon all alike, and it is not within the power of this or other court to exempt said property from taxation by enjoining the levy of tax thereon, the Constitution and laws requiring that the taxation shall be uniform.

Fourth.—Because even if said contract and the charter of the City Water Company and the Austin Water, Light and Power Company had in express terms sought to grant to or confer upon the City Water Company or the Austin Water, Light and Power Company the exclusive right to furnish the City of Austin and the inhabitants thereof with water and light, or either, for public and private use, still, under the Constitution and laws of Texas now in force and in force at the time of the making of said alleged contract and the granting of said charters, such exclusive privilege would have been subject to alteration, amendment or repeal by the Legislature.

Fifth.—Because, prior to the making of said contract, the Constitution of the State of Texas, adopted in 1876, in express terms provided that no irrevocable or uncontrollable grant or special privileges or immunities should be made, and that all privileges and franchises granted by the Legislature or created by its authority should be subject to the control thereof, and these defendants say that, under and by virtue of an act of the Legislature of the State of Texas granting to the City of Austin a new charter, which is designated as Exhibit K in complainants' bill, express power and authority was granted to the City of Austin to issue bonds for the purpose of establishing and maintaining the system of water and light works now in course of construction by said City.

Sixth.—Because, if complainants have the right to
91 sue for any alleged breach of said contract, that such suit is not cognizable by and in a court of equity, and that a plain, full and adequate remedy at law exists for any breach of the provisions of said contract which may result in damage to the complainant, and that said contract, if valid, in express terms furnishes the measure of damage for any breach of the provisions thereof. For defendants say that, under the charter of said City, authority is given to annually assess and collect a tax of one per cent. *ad valorem* on all property situated within said City for the purpose of paying for the current expenses and general improvement of the said City or its property, and that such tax would be ample to meet and fully discharge any claim that complainants or said company might establish against said City as damages for the breach of said contract.

Seventh.—Because there is nothing in said contract requiring the City of Austin to purchase the property and works of the City Water Company or the Austin Water, Light and Power Company.

Wherefore, for the several grounds of demurrer herein before stated, these defendants demand judgment of this Honor-

able Court whether they shall be compelled to make any further or other answer to said bill or any matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

D. W. DOOM,
FISHER & TOWNES,
R. H. WARD,
and GEO. F. PENDEXTER,
Solicitors and Counsel for all the Defendants except the Austin Water, Light and Power Company.

We hereby certify that the foregoing demurrer is in our opinion well founded in point of law.

D. W. DOOM,
FISHER & TOWNES,
R. H. WARD,
and GEO. F. PENDEXTER,
Solicitors and Counsel for all the Defendants except the Austin Water, Light and Power Company.

STATE OF TEXAS, }
COUNTY OF TRAVIS. }

John McDonald being duly sworn, deposes and says: I am one of the above named defendants. The foregoing demurrer is not interposed for delay.

JOHN McDONALD.

92 Sworn to and subscribed before me this 4th day of February, A. D. 1895.

D. H. HART,
U. S. Commissioner, W. Dist. Texas.

(*Endorsement*). No. 207 in Equity.—The Penn Mutual Life Ins. Co. *et al. vs.* The City of Austin *et al.*—Demurrer of all of the Defendants except the Austin Water, Light and Power Co.—Filed Feb. 4, 1895, D. H. Hart, Clerk.

JUDGMENT OF THE COURT DISMISSING BILL.

Entered March 8, 1895.

AUSTIN, TEXAS, March 8th, 1895.

Penn Mutual Life Insurance Co. et al.
vs.
The City of Austin et al.
No. 207.
Equity.

IN THE UNITED STATES CIRCUIT COURT FOR THE WESTERN DISTRICT OF TEXAS, AT AUSTIN.

BE IT REMEMBERED, that on this day came on to be heard in open court, defendants demurrer to Complainants Bill of Complaint, and the same having been heard and considered by the Court, the Court is of the opinion that the bill is without Equity.

It is therefore ordered, adjudged and decreed that said demurrer be and the same is hereby sustained, and the bill dismissed.

To which action of the court the Complainants then and there in open court excepted, and prayed the allowance of an appeal, which was by the Court allowed, and the bond for appeal fixed at $500.00.

(Signed) A. P. McCORMICK,
Circuit Judge.

93 ## ASSIGNMENT OF ERRORS.

Filed April 8, 1895.

Penn Mutual Life Insurance Company et al.
vs.
The City of Austin et al.
No. 207.

And now come the Appellants and assign error in this court, and say:—

The Court erred in sustaining Defendants Demurrer to Complainants Bill of Complaint on the ground that the said

bill is without equity, and in dismissing said bill from the docket of the Court.

C. W. OGDEN,
Counsel for Appellant.

(*Endorsement*). No. 207, Eq.—Penn Mutual Life Insurance Co. *et al. vs.* City of Austin *et al.* Complainants Assignment of Error. Filed Apr. 8, 1895, D. H. Hart, Clerk, By O. H. Millican, Deputy.

BOND ON APPEAL.

Filed Mar. 23, 1895.

IN CIRCUIT COURT OF U. S. FOR THE WESTERN DISTRICT OF TEXAS, AT AUSTIN, IN THE FIFTH CIRCUIT.

The Penn Mutual Life Insurance Co. et al., *Appellant*,

vs.

The City of Austin et al., *Respondents.*

No. 207.

KNOW ALL MEN BY THESE PRESENTS, that we, The Penn Mutual Life Insurance Co., citizen of the State of Pennsylvania, Jacob Tome, citizen of the State of Maryland, Robert Goelet and Ogden Goelet, resident citizens of the State of New York, as principals, and Joseph Nalle and E. C. Bartholomew, citizens of the State of Texas, and County of
94 Travis as securities, are held and firmly bound unto the above-named the City of Austin, John McDonald, Mayor of said City of Austin, W. C. Walsh, Frank Hamilton, S. K. Morley, A. P. Wooldridge, Jno. W. Maddox, M. A. Taylor and Jno. McDonald, in the sum of Five Hundred Dollars, to be paid to the said City of Austin and the parties named Jno. McDonald, Mayor of said City of Austin, W. C. Walsh, Frank Hamilton, S. K. Morley, A. P. Wooldridge, Jno. W. Maddox, M. A. Taylor and Jno. McDonald, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, using scrawls therefor, and dated this the 23rd day of March, 1895.

WHEREAS, the above named, the Penn Mutual Life Insurance Company, Jacob Tome, Robt. Goelet and Ogden Goelet, have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit by the Judge of the Circuit Court of the United States for the Western District of Texas during the present term of said Court at Austin, Texas, on the 8th day of March, 1895.

Now therefore, the condition of this the above obligation is such that if the above named, the Penn Mutual Life Insurance Company, Jacob Tome, Robt. Goelet and Ogden Goelet shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THE PENN MUTUAL LIFE INSURANCE COMPANY,
By
C. W. OGDEN,
Atty. of Record.

JACOB TOME,
By
C. W. OGDEN,
his atty. of Record.

ROBERT GOELET,
By
C. W. OGDEN,
his atty. of Record.

OGDEN GOELET,
By his atty. of record,
C. W. OGDEN.

JOSEPH NALLE,

E. C. BARTHOLOMEW,

Sealed and delivered and taken and acknowledged this the 23d day of March, 1895.

D. H. HART,
U. S. Commissioner.

95 Approved by

Circuit Judge.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF TEXAS.

STATE OF TEXAS,
COUNTY OF TRAVIS.

Personally appeared before me, D. H. Hart, Commissioner Circuit Court of United States, West. Dist. Texas, of said County and State, Joseph Nalle and E. C. Bartholomew, who being by me first duly sworn say that they are possessed of property to the amount of $1000.00, subject to execution over and above their liabilities under the laws of the State of Texas.

JOSEPH NALLE,
E. C. BARTHOLOMEW.

Subscribed and sworn to before me, this 23rd day of March, 1895.

D. H. HART,
U. S. Commissioner, W. Dist. Texas, at Austin, Texas.

(*Endorsement.*) No. 207.—The Penn Mutual Life Insurance Co. *et al. vs.* The City of Austin *et al.*—Bond on Appeal. Filed March 23rd, 1895. D. H. Hart, Clerk, By O. H. Millican, Deputy.

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96 THE UNITED STATES OF AMERICA,
WESTERN DISTRICT OF TEXAS.

I, D. H. Hart, Clerk of the Circuit Court of the United States for the Western District of Texas, in the Fifth Circuit, at Austin, Texas, do hereby certify that the above and foregoing ninety-six (96) pages contain a true and correct copy of the proceedings had in cause No. 207, Equity, entitled The Penn Mutual Life Insurance Company, Jacob Tome, Robert Goelet and Ogden Goelet, Complainants, *vs.* The City of Austin, John McDonald, Mayor of the City of Austin, and

W. C. Walsh, Frank Hamilton, S. K. Morley, A. P. Wooldridge, John W. Maddox, M. A. Taylor and John McDonald, composing the Board of Public Works of the City of Austin, and the Austin Water, Light and Power Company, Respondents, as the same appears from the files and records of said Court now in my custody.

Witness my hand and the seal of the Circuit Court, at office in the City of Austin, this the 9th day of April, A. D. 1895.

D. H. HART,
Clerk.

[SEAL]

By

O. H. MILLICAN,
Deputy.